

The Persistent Gender Disparity in Student Note Publication

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ABSTRACT: This Article presents original empirical research documenting a significant gender disparity in student note publication. Examination of the notes published during a ten-year time span in the general-interest law reviews at fifty-two schools—a total of nearly six thousand notes—reveals that women authored approximately forty percent of student notes. At thirteen schools, women authored fewer than thirty-five percent of published student notes. The Article proposes a range of explanations for this disparity, recognizing that the explanation may differ from one school to the next and from one year to the next at the same school. Moreover, the Article argues that the disparity matters: it has negative consequences for women’s careers years after graduation from law school. Consequently, the Article concludes by offering some preliminary ideas about what law students, law reviews, and faculty members might do to remedy the gender disparity, and by encouraging stakeholders in the note publication process to continue this conversation within their institutions.

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I. INTRODUCTION

The relationship between gender and authorship has made the news recently. Studies regularly report the scarcity of women as authors in a wide range of forums. Women author fewer articles in general print news sources.¹ Women author fewer columns in widely-read opinion forums.² Women author fewer novels reviewed in the most well-known book reviews.³ There are fewer women bloggers, and the most well-known bloggers are primarily men.⁴ Even on Wikipedia, widely hailed a cyber-utopia readily accessible by anyone, women author only thirteen percent of entries.⁵

The absence of women as authors extends to the legal realm. Women author fewer merits briefs before the Supreme Court.⁶ They write fewer

1. Amy King, *The Count 2010*, VIDA, <http://vidaweb.org/the-count-2010> (last visited Oct. 12, 2011).

2. See, e.g., James Rainey, *A Very Public Opinion Exchange*, L.A. TIMES (Mar. 11, 2005), <http://articles.latimes.com/2005/mar/11/entertainment/et-estrich11>; Dahlia Lithwick, *Girl Fight*, SLATE (Mar. 16, 2005, 5:04 PM), <http://www.slate.com/id/2114926>.

3. Laura Miller, *Literature's Gender Gap*, SALON (Feb. 9, 2011, 7:01 AM), http://www.salon.com/books/laura_miller/2011/02/09/women_literary_publishing.

4. Kara Jesella, *Blogging's Glass Ceiling*, N.Y. TIMES (July 27, 2008), <http://www.nytimes.com/2008/07/27/fashion/27blogger.html> (explaining that while fourteen percent of men blog, as compared to eleven percent of women, the most well-known bloggers according to recent rankings by Techcult and Forbes are almost entirely men).

5. Noam Coan, *Define Gender Gap? Look up Wikipedia's Contributor List*, N.Y. TIMES (Jan. 30, 2011), <http://www.nytimes.com/2011/01/31/business/media/31link.html>.

6. Tammy A. Sarver, Erin B. Kaheny & John J. Szmer, *The Attorney Gender Gap in U.S. Supreme Court Litigation*, 91 JUDICATURE 238, 242 (2008) (finding that from 1993-2001 women were only 25.52% of attorneys listed on Supreme Court merits briefs, and that women argued only 13.91% of Supreme Court cases).

judicial opinions.⁷ They write fewer law review articles than men overall, and the disparity is even greater in the “most prestigious” law journals.⁸ And their views are judged less influential—for example, a poll run by *Legal Affairs* included only three women in a list of the twenty most influential legal thinkers, and the seven legal scholars on the list were all men.⁹

The structured environment of law school provides a unique opportunity to examine the role of gender in authorship. As one of us (Nancy) has found in recent research, the gender disparity in publishing extends to that forum as well. In a study of three years of student notes published in the general-interest law reviews at fifteen law schools, women law students published 36% of notes, compared with 64% by men.¹⁰ But does the disparity persist across a longer period of time and a broader sample of law reviews? This Article takes up that important question.

We present here the most comprehensive examination to date of the relationship between gender, law review membership, and student note authorship. Our goal is, first, to add to the empirical information available regarding the gender disparity in student note publication by examining a decade of student notes published at fifty-one schools—a data set of nearly six thousand student notes. We then examine the context and consequences of publication to assess whether, how, and why gender matters. In so doing, we hope to provide analysis that will be useful to stakeholders in the note publication process—particularly law review members, editors, and would-be authors. To maximize the accessibility of our work, we have written this Article in a relatively informal style. Moreover, although this Article contains a great deal of quantitative and other empirical information, we present that information in a straightforward and non-technical manner so that all of our intended readers can readily make use of our data.¹¹

With these purposes in mind, we first situate the question of authorship in relation to the gendered nature of legal education.¹² Commentators both within and outside the legal academy have observed that, in the aggregate, men and

7. *Federal Bench Gender Snapshot*, THE THIRD BRANCH, http://www.uscourts.gov/News/TheThirdBranch/10-10-01/Federal_Bench_Gender_Snapshot.aspx (last visited Mar. 9, 2011).

8. See Minna Kotkin, *Of Authorship and Audacity: An Empirical Study of Gender Disparity and Privilege in the ‘Top Ten’ Law Reviews*, 31 WOMEN’S RTS. L. REP. 385 (2010).

9. *Who Are the Top 20 Legal Thinkers in America?*, LEGAL AFFAIRS, <http://www.legalaffairs.org/poll/>.

10. Nancy Leong, *A Noteworthy Absence*, 59 J. LEG. EDUC. 279, 280 (2009).

11. For those who wish to perform more technical analyses, we have made our complete data sets available in our appendices and online at http://www.law.yale.edu/academics/YJLF_bythenumbers.htm. Moreover, a future project will exploit the statistical potential of the data to a much greater extent than is necessary for our purposes here. See Nancy Leong & Jennifer Mullins, *Gender and Law Review by the Numbers* (unpublished manuscript) (on file with authors).

12. See *infra* Part II.

women experience law school differently.¹³ For many law students, note authorship is an important milestone in their legal education—indeed, sometimes it is the highlight of a student's law school experience. Examination of the gender dynamics surrounding that milestone, therefore, provides another means of evaluating the role of gender in students' overall law school experience and subsequent professional path.

Next, we present a series of original empirical data sets that approach the relationship between gender and student authorship from several different angles. We examine quantitative data relating to the gender composition of student bodies and law reviews in comparison to the genders of published authors. We also examine qualitatively the perceptions of law review editors and authors of published student notes. These complementary data sets allow us to develop a fuller picture of the publication process and, within it, the role of gender. Strikingly, gender differentials in authorship exhibit remarkable stability over time. From one school to the next, however, the data reveal significantly greater variation.

After presenting our empirical findings, we disentangle their implications. Two primary themes emerge. First, the publication process is heterogeneous among law schools. Considerable variation exists in many practices relevant to publication: student body composition, note writing process, note selection process, publication eligibility, faculty involvement, and so forth. We offer a broad-brush depiction of the trends among law schools as a group, but emphasize that conclusions regarding the note publication process will vary considerably from one individual law school to the next.

Second, gender disparity at any point along the channel to note publication has consequences further downstream in the process. If more men than women attend a given law school, more men than women will likely receive invitations to join the law review. If more men than women receive invitations to join the law review, then more men than women will likely submit notes for publication. If more men than women submit notes for publication, then more men than women will likely publish notes. And if more men than women publish student notes at a particular school, more men than women at that school will acquire a credential that eases the path to becoming a professor, or a Supreme Court clerk, or a federal judge, or a partner at a prestigious law firm.

The note publication process is idiosyncratic from school to school, and no set of prescriptions applies universally. Our recommendations, therefore, are by necessity tentative. But now that we have accumulated and made available a significant, large-scale data set, we wish to offer a few preliminary thoughts regarding appropriate responses to the gender disparity in student scholarship

13. See, e.g., LANI GUINIER, *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997); Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 *YALE J.L. & FEMINISM* 389 (2006).

and publication so that schools, professors, students, and law reviews will engage in serious self-reflection regarding the relationship between gender and note publication.

II. GENDER, AUTHORSHIP AND LEGAL EDUCATION

Since Lani Guinier's seminal work *Becoming Gentlemen*,¹⁴ commentators have regularly turned the lens of gender on the law school environment. Guinier and her collaborators found that women are disproportionately alienated and intimidated by their experiences in law school.¹⁵ Those disparate experiences linger, affecting women's career trajectories long after graduation.¹⁶

Subsequent studies have reinforced many of the conclusions of Guinier and her colleagues. Many such studies have focused on one law school as a case study in legal education.¹⁷ Still, they repeat common themes. Women describe more discomfort with the classroom experience—particularly the Socratic method.¹⁸ They report less confidence in their abilities.¹⁹ They tend to receive lower grades.²⁰ They are less likely to seek competitive employment, such as judicial clerkships, after graduation.²¹ And when they do so, they are less likely to succeed.²²

14. GUINIER, *supra* note 13.

15. *Id.*

16. *Id.*

17. See, e.g., Bashi & Iskander, *supra* note 13 (examining legal education at Yale Law School); Allison L. Bowers, *Women at the University of Texas School of Law: A Call to Action*, 9 TEX. J. WOMEN & L. 117 (2000) (examining legal education at the University of Texas School of Law); Adam Neufeld, *Costs of an Outdated Pedagogy? Study on Gender at Harvard Law School*, 13 AM. U. J. GENDER, SOC. POL'Y & L. 511 (2005) (examining legal education at Harvard Law School); Claire G. Schwab, *A Shifting Gender Divide: The Impact of Gender on Education at Columbia Law School in the New Millennium*, 36 COLUM. J.L. & SOC. PROBS. 299 (2003) (examining legal education at Columbia Law School). Most recently, Felice Batlan explored the female law student experience at Chicago-Kent College of Law. Felice Jo Batlan, *Are We Our Mother's Law Students?: Women's Law School Experiences and an Agenda for Action*, House Lectures 17 (Mar. 2, 2009), http://digitalcommons.law.uga.edu/lectures_pre_arch_lectures_house/17.

18. See, e.g., Lani Guinier, Michelle Fine & Jane Balin, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 45–47 (1994) (finding that women felt more alienated than men by the Socratic method and were consequently less likely than men to speak in class, and finding that this silence contributed to women's alienation from the law school experience); Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy, and Discourse*, 5 MICH. J. RACE & L. 847, 879–85 (2000) (describing women's experiences with classroom silencing); Rita Sethi, *Speaking Up! Speaking Out! The Power of Student Speech in Law School Classrooms*, 16 WOMEN'S RTS. L. REP. 61 (1994) (describing the alienation the author felt as a result of remaining silent in the law school classroom); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1300–02 (1988) (discussing the silencing of women in law school).

19. Neufeld, *supra* note 17.

20. Bashi & Iskander, *supra* note 13, at 401 & nn.46–47 (collecting sources).

21. GUINIER, *supra* note 13.

22. *Id.*

Some work has focused explicitly on the function of law review membership in legal education. Sari Bashi and Maryana Iskander found that women occupied a disproportionately low number of editorial board positions on *The Yale Law Journal* between 1996 and 2003.²³ Women also comprised only 45% of the third-year law review membership and published only 36% of student notes during the same time period.²⁴ Although data regarding acceptance rates were available for only the 1994-1995 academic year, those data suggested that the gender disparity in publication resulted in part from a disparity in acceptance rates: 8% of notes submitted by women were accepted, in contrast to 35% of notes submitted by men.²⁵ Intriguingly, Bashi and Iskander attributed much of that disparity to women's diminished likelihood of resubmitting their notes after an initial rejection: during that academic year, 37% of men resubmitted, while only 12% of women did the same. Admittedly, the data accumulated by Bashi and Iskander is limited to a single year's submission information more than fifteen years ago;²⁶ still, it sheds light on an interesting possibility that we will explore in more detail in Part IV.

In *A Noteworthy Absence*, one of us (Nancy) examined note publication in more detail. That research examined three years of student notes from the top fifteen law schools as ranked by *U.S. News & World Report*. It found that women published 36% of notes at the schools in the sample during the specified time period.²⁷ That percentage was significantly less than the percentage of women authors on law review, which in turn was significantly less than the percentage of women in the student body of the law schools in the sample.²⁸ Two important pieces of information were unavailable: the percentages of note submissions authored by men and by women, and the percentage of those submissions accepted. Notably, the vast majority of schools either do not compile that information or do not make it available. As a result, diligent effort yielded only a few years' worth of information at a few schools regarding acceptance rates.²⁹

Recognizing that information regarding submission and acceptance rates might lead to somewhat different conclusions regarding the causes of the note publication disparity, *A Noteworthy Absence* proposed one explanation for the disparity while acknowledging the likelihood that other explanations also play a role. It suggested that women's alienation from the law school experience—including, in particular, the lack of meaningful engagement with faculty

23. Bashi & Iskander, *supra* note 13, at 424-25.

24. *Id.* at 425.

25. *Id.*

26. Nonetheless, as Bashi and Iskander observe, the study's results are "consistent with comments by faculty members that they believe women exhibit less 'tenacity' in pursuing academia-related goals." *Id.* at 426.

27. Leong, *supra* note 10, at 297.

28. *Id.*

29. *Id.* at 291-92 (describing available data on submission rates).

mentors—is likely to produce a disparity in the rate at which women author student notes.³⁰

Previous work thus provides useful insight into the way some women experience law school and, more specifically, the way in which the note publication process reflects that experience. Yet the discourse currently lacks a long-term, large-scale quantitative study examining the relationship between gender, law review membership, and note publication over time. Moreover, no work has examined in depth the *consequences* of women's underrepresentation among note authors: how does that underrepresentation affect women's law school experiences and, perhaps more importantly, their career trajectories after law school? Our work here aims to fill that void. The next Part presents a decade's worth of original data examining note publication, then examines those data's consequences qualitatively.

III. DATA

To study the role of gender in student note publication, we accumulated an array of information. Our research included fifty-two schools: those ranked in the “top fifty” by *U.S. News & World Report* either in 2009³¹ or in 2010³² or in both years.³³ We emphatically do not endorse the *U.S. News & World Report* rankings, but they are a long-standing and—deservedly or not—highly influential source of law school ranking information, and so we employ them here as a way of selecting a set of schools to study.³⁴ For the schools we selected, we gathered information spanning ten academic years: 1999-2000 through 2008-2009.³⁵

We limited our research to each school's general-interest law review—that is, the journal bearing the school's name and not limited to any specific subject matter (i.e., the *Stanford Law Review* for Stanford Law School). This allowed comparison among analogous journals at different schools. While the number and subject matter of student-run publications varies from school to school, every school in our study had one publication that met our criteria.³⁶

30. *Id.* at 293-95.

31. *The Top Law Schools*, 146 U.S. NEWS & WORLD REPORT 74, 74-75 (May 1, 2009).

32. *The Top Law Schools*, 147 U.S. NEWS & WORLD REPORT 74, 74-76 (May 1, 2010).

33. Appendix A reproduces the rankings for 2010 and 2011. The two schools that appeared in 2010 but not in 2009 are Arizona State University and University of Florida. Cardozo appeared in 2009, but not in 2010.

34. See Leong, *supra* note 10, at 280 n. 2.

35. Our treatment of Harvard Law School and the *Harvard Law Review* is idiosyncratic, however. That journal does not attribute its student-authored work to individual authors, so it is impossible to determine the gender breakdown of that journal's published work.

36. It would be useful for future work to analyze the role of specialty journals and their relationship to the membership selection and publication practices of the general-interest law reviews. Indeed, we think this would make an excellent student note topic.

We then set out to learn as much as possible about note publication during the designated time frame at those schools. First, for each year we collected information on the gender composition of the student body at each school and the gender composition of the law review membership. That information is presented in Part III.A.

Next, for each student-authored piece published in one of the selected journals during the ten-year time period, we collected the name and gender of the author and the subject matter of the journal. That information is presented in Part III.B.³⁷

To complement these quantitative data, we administered two surveys inquiring about the experiences of those involved in note publication. We sent the first to the current law review editors in charge of selecting student pieces for publication at each of the fifty-two law reviews in our designated sample.³⁸ We sent the second to a large random sample of student note authors. Parts III.C and III.D present the results of these two surveys.

One methodological note is in order. For purposes of this article, we made a conscious decision to present the empirical information in this Article without performing statistical analysis. Our goal is to communicate in general terms the state of law review membership and publication in relation to gender—in particular, to law students, law review members and editors, and faculty advisors—and such analysis is unnecessary for those purposes. Put another way, the information we have gathered is a complete census of student enrollment, law review membership, and student note publication over a decade and is therefore more than sufficient to allow the broad, impressionistic conclusions that we hope readers will draw. In a subsequent article for a narrower academic audience, we will undertake a detailed statistical analysis of the data to pinpoint with mathematical exactitude the role of various factors in explaining the gender disparity.³⁹ For the broader audience we hope to reach with this relatively brief and accessible piece, however, such analysis is unnecessary.

A. Student Enrollment and Law Review Membership by Gender

As a backdrop for our examination of law review membership and student note publication, we obtained enrollment data for each of the schools in our sample. Although it is commonly believed that half of all law students are now

37. We limited the definition of “student publication” to pieces identified as “notes” or “comments” in a publication’s table of contents. Although some schools publish “recent development” pieces, we excluded such pieces because not all schools publish them, risking over-representation of schools that do; moreover, such pieces tend to be shorter in length and report-like in format.

38. These surveys are attached at Appendix G (Editor Survey) and Appendix H (Author Survey).

39. Leong & Mullins, *supra* note 11.

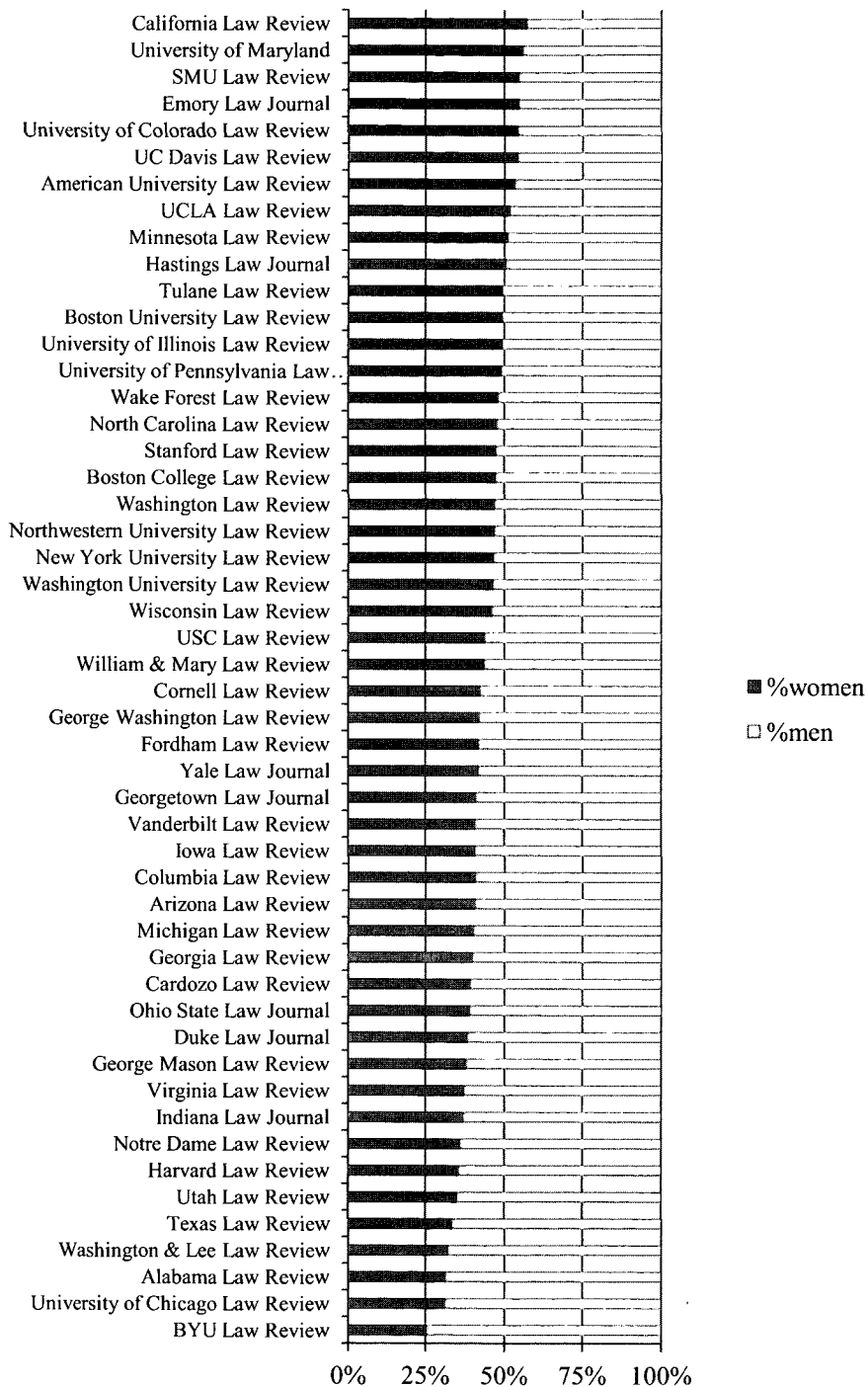
women,⁴⁰ this is not true of the schools in our survey. Many schools did have approximately equal numbers of men and women enrolled during the time period we examined—the academic years from 1999-2000 through 2008-2009—and some even had more women enrolled than men. But the enrollment at many other schools displayed a significant disparity during the time period in question. Across the fifty-two schools we surveyed, women comprised 47% of the total student enrollment, while men were 53%.⁴¹ Figure 1 depicts this information for each individual school, and the precise numbers for each individual school are available in Appendix B.

We note that the enrollment data do not represent either the pool of potential law review members or, in most instances, the pool of potential student note publishers. Law reviews allow only second- and third-year students to be members, and the enrollment data include first-year students as well. Moreover, as we will explain in more detail later, not all students are eligible to publish student notes, although there is variation in the precise limitations from one law review to the next. Finally, the available data on the number of men and women in law school include both full- and part-time students for schools with both programs, and at some schools part-time students are ineligible for law review membership or note publication or both.⁴² The enrollment data are therefore most appropriately viewed as a general backdrop for our other data, not as a source for more detailed statistical comparison.

40. When we spoke with colleagues about our project, for example, many recited this statistic to us and were surprised to learn that it was not accurate.

41. We drew the overall enrollment data from the *ABA-LSAC Official Guide to ABA-Approved Law Schools* for years 2000 through 2009. These editions of the official guide corresponded to the ten academic years we studied.

42. From available sources, we were unable to determine whether the gender composition of the full- and part-time enrollment was significantly different at schools with both programs. One might hypothesize that part-time enrollment might be more attractive to women than men because women are more likely to have primary responsibility for childcare or to be single parents, although we know of no data to support this conclusion. There might be countervailing reasons that part-time enrollment might be more attractive to men—for example, men may be more likely to be the primary earners for their families, and might therefore have no choice but to attend school part-time in order to sustain their full-time employment. In any event, given that only six of the schools in our study offer part-time enrollment (Georgetown, American, George Washington, Fordham, Cardozo, and Maryland) and that part-time program enrollment tends to be significantly less than full-time program enrollment, part-time students comprise a sufficiently small percentage of the total that they do not affect our ultimate conclusions.

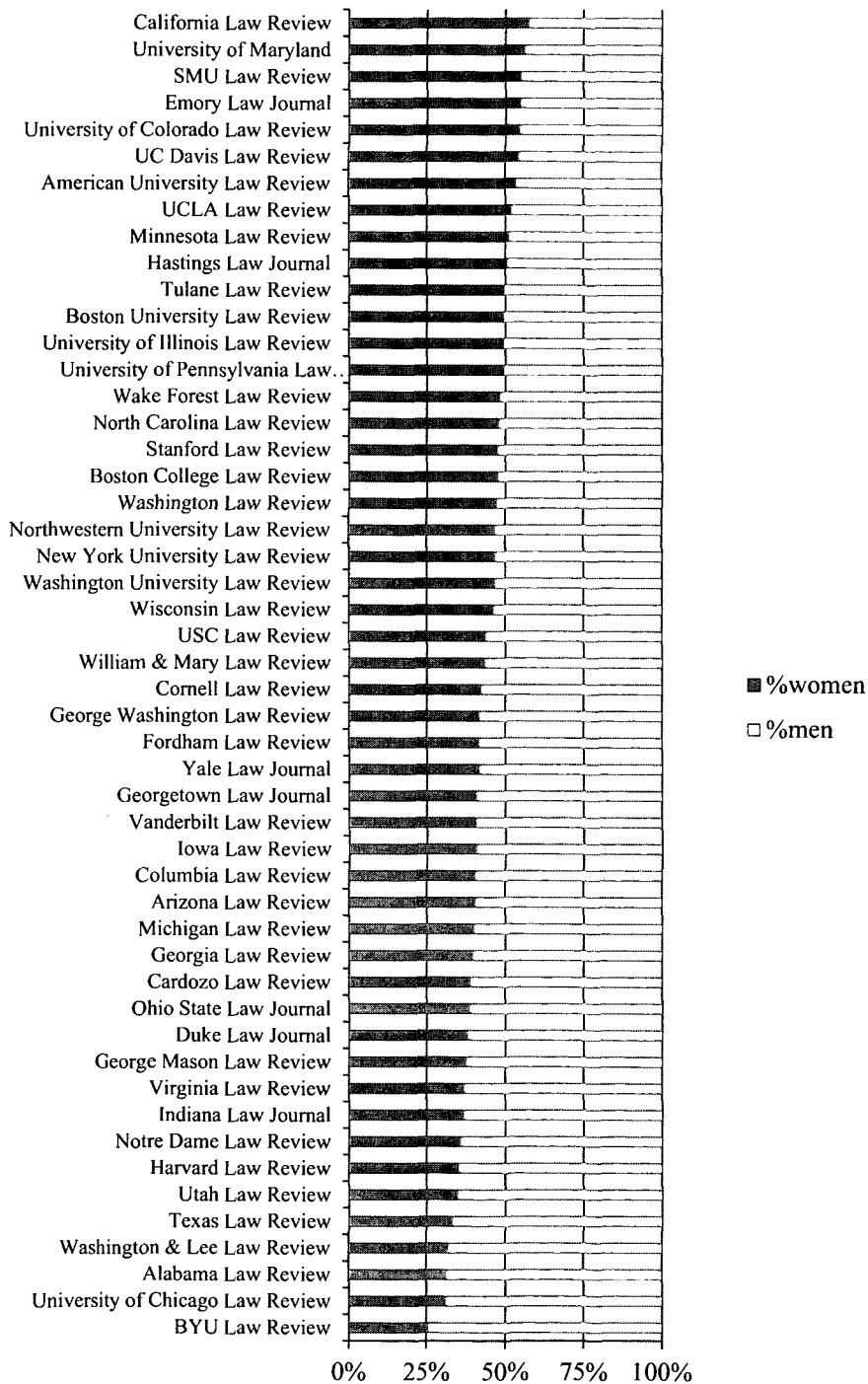
Fig. 1: Law School Enrollment by Gender 1999-2009

We then determined the gender composition of the general-interest law review at each school by examining the mastheads during those ten academic years. The majority of members' genders were readily identifiable from their names ("John," "Mary").⁴³ For names that were more ambiguous ("Jamie," "Dana"), we attempted to identify the individual through internet research.⁴⁴ We were able to make a tentative identification of most individuals' genders in this manner.⁴⁵ At most law reviews, however, a few individuals remained unidentified despite our best efforts. The percentage of unidentified individuals was only 3% overall and, with a few exceptions, no more than 5% at any individual school. To arrive at final approximations of the gender composition of the law review at each school for purposes of discussion in the text, we divided the percentage of unknown individuals evenly between men and women. If anything, this approach may actually *overestimate* the percentage of women on law review at many schools, because we might expect the distribution of these unknowns would be more in line with the gender distribution at a given school. Figure 2 depicts the gender breakdown of the membership at each law review, while Appendix C contains the precise numbers for each school, including the number of unknowns.

43. We acknowledge that our methodology accepts and even reifies a binary conception of gender with which we simply do not agree. It obscures, for example, transgender identification, or identification by those who do not consider themselves either men or women. Despite these misgivings, we have chosen to rely on conventional binary thinking about gender because we do not have the resources to catalogue the broad trends we are studying without doing so. Enrollment data, for example, is available only subdivided into two genders, and in examining law review mastheads, we had no logistically viable way to divide individuals into more than two genders. In an ideal world, there would be a way of incorporating more nuanced and fluid readings of gender into a large-scale empirical study such as this, and hopefully someday this will be the case. For the present, however, we hope that we adequately communicate both our discomfort with the gender binary we have adopted as well as an explanation for why that binary is a less than entirely accurate description of the world.

44. Many individuals have a law firm website page, a LinkedIn profile, a Facebook page, or some other online presence that allows for tentative identification of their gender. For a few individuals, we were also able to get in touch with the registrar's office at their alma mater, which helped us identify the gender information on file with their schools.

45. This methodology is admittedly imperfect. Some individuals whose names are conventionally masculine—and who, indeed, may be identified by others as biologically male—identify themselves as women. The same is true for those with conventionally feminine names. We respect such self-identification and wish there were a way to accommodate it in our research. Unfortunately the large size of our sample did not permit contact with individual members regarding gender classification, and we regret any errors resulting from gender misclassification. Despite possible errors of this nature, our research attempts only to identify broad trends, and so any misclassifications, while unfortunate, result in minimal effects on our large database of mastheads and student note publications.

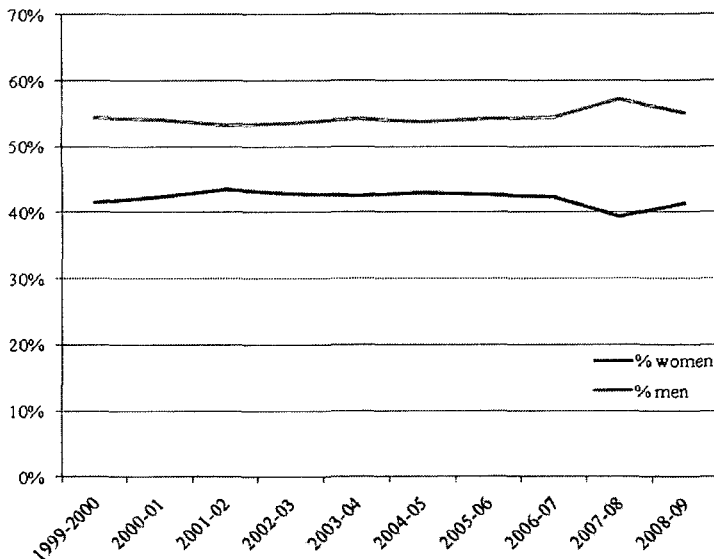
Fig. 2: Gender Composition of Law Review Membership 1999-2009

The gender composition of law review membership varied considerably from school to school. Brigham Young University had the lowest percentage of women on law review during the ten-year time period we examined, with women comprising only about 25% of members. But there were substantial disparities at several schools: for example, at Chicago women were only 31% of members; at Texas women were 33%; at Harvard they were 36%; at Notre Dame they were 36%.

Berkeley had the highest percentage of women on law review, with women comprising about 56% of members. Other law schools at which women were a numerical majority of law review members included UCLA, Emory, Minnesota, UC Davis, American, Colorado, Maryland, and SMU.

The composition of law review membership was quite stable over time, ranging from a slightly atypical low of about 39% women in academic year 2007-2008 to a high of about 43% in academic years 2002-2003 through 2005-2006. Tellingly, the percentage of women members in the first and last year of the study were virtually identical: 41.6% in academic year 1999-2000, and 41.4% in academic year 2008-2009. In short, little change occurred over a decade.

Fig. 3: Law Review Membership Over Time



B. Note Publication and Gender

To examine the authorship of student notes, we created a database including notes published over the past ten years in the general-interest law

reviews at the fifty-two schools discussed in the previous section.⁴⁶ We looked at the issues of the law reviews published between academic years 1999-2000 and 2008-2009.⁴⁷ For each note, we entered the name and gender of its author,⁴⁸ the journal, year, and volume in which the note was published, and the topic area of the note.

The finalized database included 5844 notes.⁴⁹ Of these, 2316 were published by women, or 39.6%, while 3443 notes, or 58.9%, were published by men.⁵⁰ Despite our best efforts, we were unable to identify the gender of the authors of 85 notes—about 1.5% of the total. In order to ensure the accuracy of our findings, we conducted an intensive audit of the database. Our audit procedure consisted of verification of one out of every fifty entries and a random check of at least two complete issues for each law review. If either of these methods uncovered an error, we rechecked the entire volume containing the error. Following that protocol, we found errors in only about 4% of entries, and most of the errors we found consisted of minor typographical errors such as misspellings of names. Thus, the vast majority of errors would not have affected the substantive conclusions we drew from our database.

46. The database contains notes from only fifty-one schools because Harvard does not attribute student notes to its authors by name. We note that if Harvard's student notes *were* included, the gender disparity in student note publication would almost certainly be greater than our current numbers indicate. Several *Harvard Law Review* alumni have indicated to us that any law review member could publish a note, case comment, or Supreme Court case comment in the Review. Further, the consensus among these alumni seemed to be that the percentage of men and women members of the Law Review would be a good approximation of the percentage of student notes published by men and women. Without weighing in on the accuracy of that assumption—particularly given the inaccuracy of many editors' perceptions of gender in the publication process, which we will discuss in Part III.C—we think it worth noting that accepting Harvard editors' estimates and including notes published in the *Harvard Law Review* in our tally (as part of the 64% male to 36% female ratio that characterizes its membership) would reduce the total percentage of student notes published to about 38% female. Harvard publishes a large number of student notes and its inclusion would have a substantial effect on the ultimate tally. We would therefore welcome Harvard's voluntary participation in our study: we would not need to know the identities of its authors, only the total number of authors of each gender, thus allowing Harvard to preserve its practice of anonymity. Thus far, however, Harvard has declined to participate in our research.

47. Some law reviews number their volumes according to the calendar year; others number their volumes by the academic year. For law reviews numbered according to calendar year, we did our best to determine which issues were published during the ten-academic-year time period in our study. Sometimes it was difficult to determine whether a particular issue should be included—for example, one published in July 1999, or numbered but not designated by month or season. When in doubt, we erred on the side of inclusion. Appendix C provides a complete listing of the issues we included for each journal.

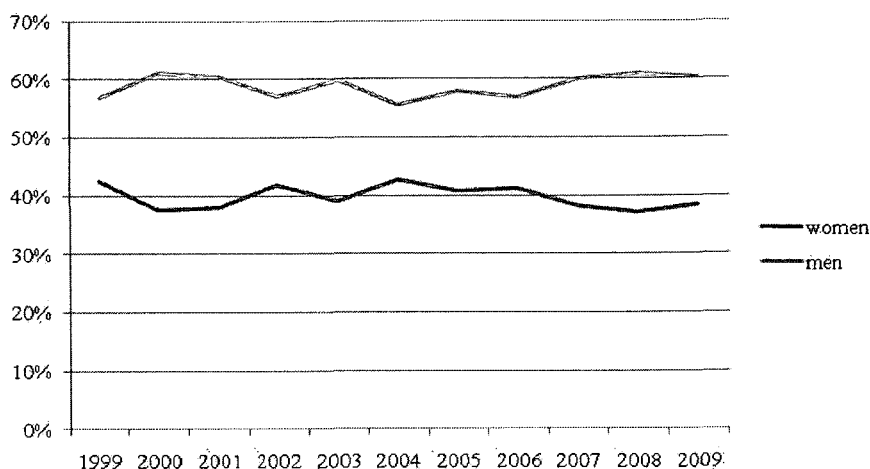
48. We researched the gender of the author according to the process described in Part I.A.

49. We have made this database publicly available online at http://www.law.yale.edu/academics/YJLF_bythenumbers.htm to allow future researchers to build on our data or undertake different forms of analysis. We hope that the availability of this large data set will encourage future work in this area.

50. Here and throughout the remainder of the Article, when we refer to the number of notes published by men and by women, we are talking about the number of *identified* men and women. Since about 1.5% of authors were not identified, the numbers will not quite add up to 100%. We choose this approach—rather than excluding the unidentified authors from the data set—as a way of reminding the reader that the number of unknowns introduces a small amount of additional uncertainty into the numbers.

The disparity in the rates at which men and women published notes was fairly stable over the ten-year time period we examined. In 2000, the first full calendar year represented in the data set, 39.6% of notes were published by women. In 2008, the last full calendar year represented in the data set, 39.2% of student notes were published by women. The 2008 number represented a low. The highest percentage came in 2004, when 42.7% of student notes were published by women. Overall, however, there did not appear to be a marked trend during the years we examined.

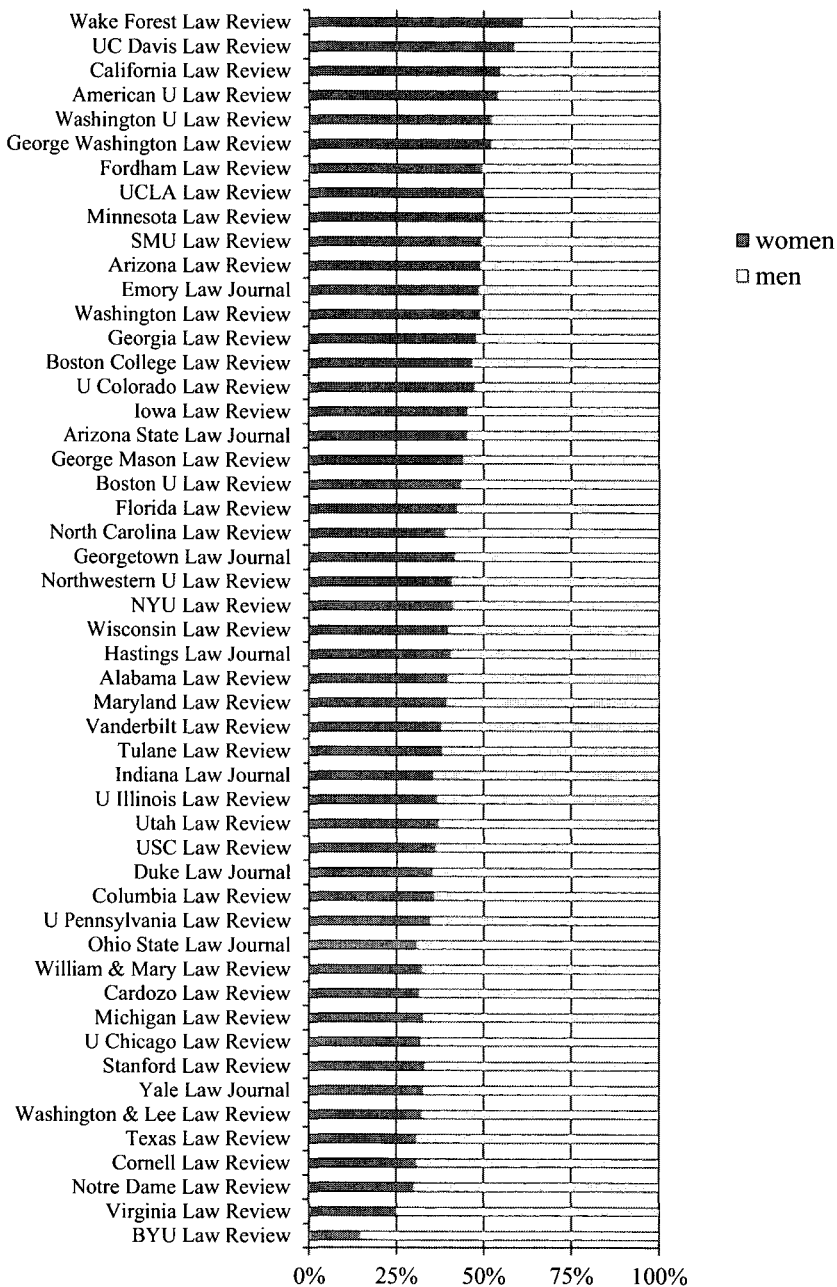
Fig. 4: Percentage of Notes Authored by Men and Women 1999-2009



The disparity in publication varied substantially from one school to the next. At some schools, the disparity was minimal or nonexistent. At others, the disparity was considerable. At no school did women author more than 60% of student notes over the ten-year time period. Women published the highest percentage of notes at Wake Forest, with 59.5% of all notes authored by women. UC Davis had the next largest percentage of women authors, with 54.3% of student notes by women. For now, we will focus on the schools at which 60% of student notes or more were authored by members of one gender.

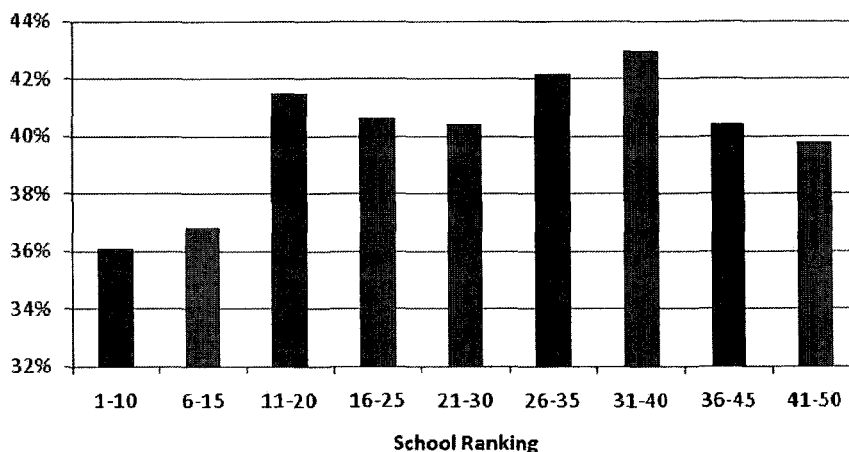
At twenty-three schools, 60% or more of student notes were authored by men over the ten-year time period. At thirteen schools, more than 65% of student notes were authored by men. Those schools were: Brigham Young University, 85%; University of Virginia, 75%; Notre Dame, 69.7%; Cornell, 69%; Texas, 68.6%; Washington & Lee, 67.8%; Yale, 67.1%; Stanford, 67.1%; Chicago, 66.85%; Michigan, 66.7%; Cardozo, 66.4%; William & Mary, 65.7%; and Ohio State, 65.6%.

Figure 5 provides a graphical representation of the percentage of student notes published by men and by women at each school. The precise numbers are available in Appendix D.

Fig. 5: Gender of Note Authors at Individual Schools 1999-2009

Results also varied depending on where a school fell within the *U.S. News* rankings. We examined the schools in tiers by dividing them into overlapping sets of ten. At schools ranked 1-10, women published 36.1% of student notes. At schools ranked 6-15, women published 36.8% of student notes. At schools ranked 11-20, women published 41.5% of student notes. From there, the percentages leveled off, with some variation driven by individual schools, notably Brigham Young University.⁵¹ Figure 6 represents the percentages for each overlapping set of ten schools.

Fig. 6: Percentage of Women Authors by School Ranking 1999-2009



We also considered whether gender was correlated with topic selection.⁵² We collected information about topic selection through a review of the title and introduction of each student-authored piece. In order to normalize this data for more meaningful analysis, we focused on broad categories.⁵³ These categories were based on a simple question: in which law school class would a note author be most likely to learn about this article's subject area?⁵⁴ Figure 7 represents,

51. At Brigham Young University—ranked 41 in 2009 and 42 in 2010—only 15% of published notes were authored by women. This percentage was anomalously low for schools ranked 36-45 and 41-50 and certainly depressed the overall percentage of notes published by women in those tiers. If Brigham Young University were removed from those two tiers, the percentage of notes published by women would be 45% at schools 36-45 and 43% at schools 41-50.

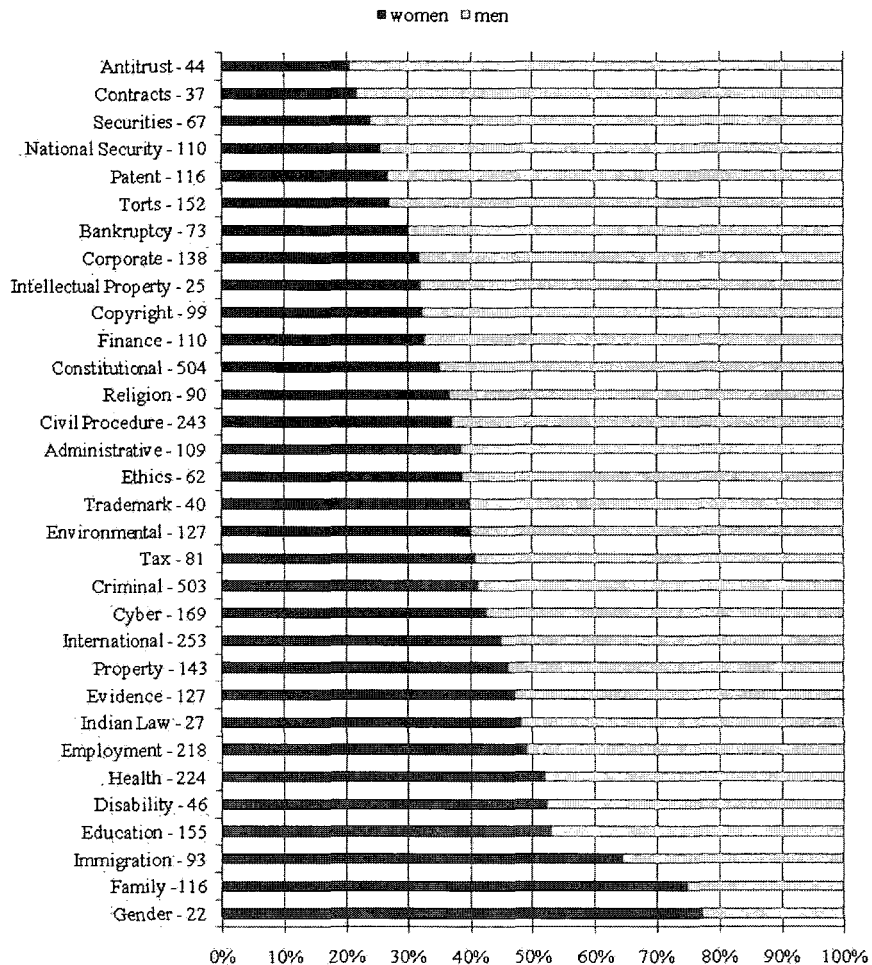
52. We undertook this examination with the understanding that many factors influence authors' topic selection. It might, for example, reflect the specializations of a given school—for example, some schools are known for certain specializations like intellectual property or human rights. Or at any given school, if a particularly popular and influential professor specializes in a certain subject matter, more students might be inspired to write their notes on that subject. Still, we were interested to see whether gender had a discernable relationship with topic selection on top of these other influences.

53. A list of the categories we used appears in Appendix F.

54. Of course, categorizing notes according to subject matter categories is less than an exact science. Many notes were difficult to classify or spanned more than one category. We placed notes in up to two categories—meaning that the overall number of “classifications” is greater than the overall number of notes—and also placed many notes in an “Other” category not represented in the chart. We

for each category, the percentage of notes falling into each category that were written by men and by women; the number following the category name corresponds to the total number of notes published in that category.

Fig. 7: Gender and Topic Selection



The data reveal some differences between the subject-area preferences of men and women. Of course, not all topic areas were addressed by the same number of notes, although it is an open question whether that was due to the preferences of student authors or the preferences of note selection committees. We identified eighteen high-volume subject areas—areas in which more than one hundred notes were published during the ten-year time frame. Women

therefore state our generalizations about the topic preferences of men and women tentatively, but believe these tentative conclusions still add useful information to our examination of student note publication.

published fewer than 40% of the notes in nine of these areas: National Security, 25%; Patent, 27%; Torts, 27%; Corporate, 32%; Finance, 33%; Constitutional, 35%; Civil Procedure, 37%; Administrative, 39%, and Environmental, 40%. Some of these areas might be viewed as stereotypically male—historically men are more likely to major in undergraduate math and science fields that might lead to an interest in patent, for example, and business and finance are also traditionally male-dominated. By contrast, 53% of notes about education and 75% of notes about family law were written by women; we might stereotype those topics as ones in which women are more likely to have background or interest.

Ultimately, the information about topic selection is inconclusive. To the extent that high-volume topics reflect the preferences of note editors, we could say that, in the aggregate, note editors tend to prefer topics that men tend to write about more often. To the extent that high-volume topics reflect the preferences of note authors, we could say that men's greater success at publication results in the overrepresentation of topics preferred by men. Additional qualitative research—perhaps in the form of surveys of law review editors and note authors—would further illuminate the causal story. At present, we can say that there is some relationship between gender and topic selection, but more study is necessary to determine the precise contours of that relationship.

As the quantitative data presented thus far makes clear, current note publication practices result in a significant gender disparity. To further illuminate the data we have so far presented, we created and administered qualitative surveys to law review editors and note authors. We turn now to those surveys.

C. Editor Survey

To examine the practices of the student-run law reviews from which we gathered empirical data, we created an online survey ("Editor Survey") regarding various aspects of the note publication process. In fall 2010, we emailed the link to the Editor Survey to the lead note editor or editor-in-chief for each of the journals for which we collected data.⁵⁵ We used the email addresses publicly available on each journal's website. To encourage a greater rate of response, we also followed up by calling the journals from which we did not originally receive a response. We then re-sent the survey to those journals that provided us with updated contact information.⁵⁶

55. For the Editor Survey as well as for the Author Survey discussed in Part III.D, we used Google Documents tools to create and administer the surveys and to manage the data we collected.

56. The text of the email linking to the survey was similar in each instance. It identified us, explained that we were conducting research relating to the selection and publication of student notes, and requested that the recipient or another editor complete a brief survey available at a provided link. It

From the fifty-two journals we emailed, we received twenty-nine responses. The responses were distributed fairly evenly across the rankings. As we had hoped, the majority of responses came from either lead note editors or editors-in-chief, of whom all but two were 3Ls at the time of the survey. After each school's initial response to the survey, we wrote back to them and requested permission to use their answers in published scholarly work. Some schools preferred that their responses not be attributed to them by name, and we respect that request for anonymity throughout this Article.⁵⁷ Other schools very kindly authorized us to discuss their processes in this Article. We will refer to those schools by name here.

The Editor Survey was divided into three sections.⁵⁸ The first section asked general questions about the selection process for journal membership. Representatives from all the journals that completed the survey responded that their publication considered both grades and a written submission in order to select members.⁵⁹ However, the weight that each component receives varies among the journals. Many journals have different selection processes independently based on grades and written submissions, and others will also consider both grades and writing as percentages of a single score to determine selection.⁶⁰ Some journals also have a "Note-on" process in which any law student may be offered membership with the submission of a note of publishable quality.⁶¹ Seven editors—twenty-seven percent of the survey

also invited editors to contact us with questions regarding the survey or our research at any time and provided our contact information. Although it is possible that some recipients attributed a particular stance on gender and student note publication to us simply by virtue of our efforts to investigate the topic or through prior familiarity with Nancy's work on the topic, we made every effort to ensure that neither the email inquiry nor the survey itself advanced any particular stance on gender and student note publication.

57. The preference of some law reviews for anonymity thwarts our original plan of making all responses to the Editor Survey available verbatim in an appendix. But we believe it is paramount to respect those journals' desire for anonymity, and moreover we believe that schools were more willing to participate and respond candidly as a result of our agreement to grant anonymity.

58. The Editor Survey is reproduced in Appendix G, *infra*.

59. Selection practices for student-run journals are often coordinated among all journals at given school—that is, students who wish to become members of a journal submit a single application and rank journals according to their preferences, and then journals select members based on a combination of performance on the application tasks and prospective members' preferences. Although our survey did not ask about this type of coordination, such practices may inform the response received and are worth further investigation.

60. See, e.g., Editor Survey Response from University of Virginia School of Law (Nov. 20, 2010); Editor Survey Response from University of California, Los Angeles School of Law (Nov. 19, 2010); Editor Survey Response from Washington University School of Law (Nov. 21, 2010); Editor Survey Response from Emory University School of Law (Sept. 28, 2010); Editor Survey Response from Boston College School of Law (Sept. 29, 2010); Editor Survey Response from William & Mary Law School (Oct. 4, 2010). Accordingly, there does not appear to be a correlation between the type of selection process and the ranking of the school itself.

61. These journals include *Michigan Law Review* and *Virginia Law Review*. For both of these journals, this selection appears to be discretionary. See Editor Survey Response from University of Michigan Law School (Sept. 24, 2010); Editor Survey Response from University of Virginia School of Law (Nov. 20, 2010).

respondents—stated that their journals consider diversity when selecting members.⁶² The majority of such editors were from schools ranked in the top twenty; however, none of the editors elaborated on how such considerations are evaluated or how much weight these factors receive.⁶³

Next, the survey included questions relating to the note writing process at each journal. Nearly every journal that responded required note writing. The law reviews at all but two schools—Berkeley and Georgetown—have formal note writing processes.⁶⁴ All the journals with formal writing processes require their members to write the required note during the second year of law school, often during fall semester and with the guidance of a third year editor or mentor. The process itself varies from journal to journal without any obvious relationship to ranking. Only three schools require their members to have a faculty advisor, but half require additional journal members to review the piece prior to completion. Notably, the more formalized the note-writing process, the less likely that note selection will be truly anonymous, as increased formalization leads to increased discussion among members.

All of the journals that responded consider notes written by their members for publication. In fact, at sixty-five percent of the responding journals, *only* journal members' notes are considered for publication.⁶⁵ In other words, at those journals, membership is a prerequisite for publication. In the journals that only consider their members' notes for publication, the majority consider second year law student submissions only. The remaining journals that only consider member submissions will either only review third year student submissions or any submission from a member. These differences reflect the variation in note-writing timelines from one journal to the next. For example, at the *Boston University Law Review*, notes are written during the entire second

62. Editors from the University of California, Berkeley School of Law, Georgetown University Law Center, University of Virginia School of Law, Cornell Law School, University of Minnesota Law School, Boston College School of Law, and New York University School of Law all indicated that diversity factors are considered. See Editor Survey Response from University of California, Berkeley School of Law (Sept. 24, 2010); Editor Survey Response from Georgetown University Law Center (Nov. 18, 2010); Editor Survey Response from University of Virginia School of Law (Nov. 20, 2010); Editor Survey Response from Cornell Law School (Sept. 27, 2010); Editor Survey Response from University of Minnesota Law School (Oct. 4, 2010); Editor Survey Response from Boston College School of Law (Sept. 29, 2010); Editor Survey Response from New York University School of Law (Nov. 19, 2010). Examination of diversity factors beyond gender—race, ethnicity, sexual orientation, class, and language, for example—is beyond the scope of this Article. We hope that future work will take account of these other axes of identity.

63. See *Membership Information*, VIRGINIA LAW REVIEW, available at http://www.virginialawreview.org/page.php?s=membership&p=members_overview (last visited Oct. 12, 2011) (stating that a personal statement is submitted by prospective members).

64. Although the *Georgetown Law Journal* does not have a formal note writing process, the responding editor indicated that all staff members were required to fulfill a "note requirement" prior to graduation. See Editor Survey Response from Georgetown University Law Center (Nov. 18, 2010).

65. This is fairly consistent with the results of the research in *A Noteworthy Absence*, which found that six out of fifteen schools considered only notes authored by members for publication, one school gave tie-breaker preference to the notes of members, and eight schools did not limit their consideration to the notes of members. Leong, *supra* note 10, at 284.

year of law school. Accordingly, the journal only considers notes written by third year law students who are journal members. Thirty-five percent of the responding journals stated that they would consider a note submitted by any law student at the school—journal members or non-members—for publication. There does not appear to be a relationship between eligibility for publication and school ranking.

The selection process itself varies among the schools. Nineteen responding journals—seventy-three percent of the responses—stated that the process is blind.⁶⁶ At journals where the process is not blind, several editors noted that selection takes place at the end of writing process and is part of the overall determination that the note meets the journal's requirements. Some editors added that such notes must go through additional review by several editors and therefore cannot remain anonymous.⁶⁷ Fifteen editors specifically stated that faculty members play no role in the selection process while only two editors stated that faculty members actively play a role. The editor from the *Cornell Law Review* noted that gender and status on a journal may be considered during this process.⁶⁸

The final set of questions focused on whether editors perceived or recognized a gender disparity in journal membership and note publication. Three editors stated that their journal keeps records of the number of women compared to men whose notes are selected for publication.⁶⁹ Interestingly, the journals that keep such records have little to no disparity in publication

66. It is worth remembering, however, that even at schools where review is formally blind, there may be informal knowledge of an author's identity. People routinely talk to their friends about their note topics, law review members seek advice from one another, and some topics arise from papers written for classes in which other journal members may be enrolled. Blind review processes, therefore, are not necessarily wholly anonymous. Future work might usefully examine law reviews' formal or informal norms regarding self-identification and recusal by editors in blind processes when they do happen to know the identity of a particular author.

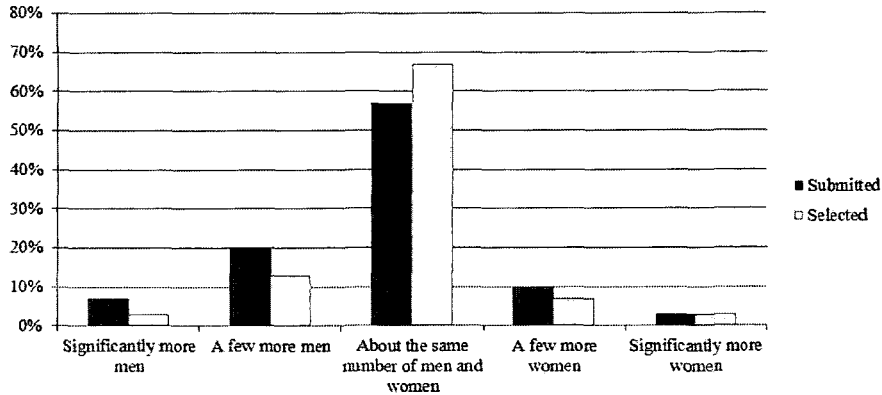
67. See Editor Survey Response from University of Michigan Law School (Sept. 24, 2010) ("Authors work with an editor until the editor feels the note is publishable. At this point they send it to a pass-off editor, who works with the author to resolve any further problems with the note. Finally, the note goes to a full read, where the Executive Note Editor, the Managing Editor, the author's editor and pass-off editor and an extra Note Editor meet to decide on publication. The process is not blind and faculty members are not involved, although their opinions of the note, if available, are considered.").

68. See Editor Survey Response from Cornell Law School (Sept. 27, 2010) ("Topic can play a role. No faculty members are involved. Gender and Law Review or other status can play a role only after a note is being seriously considered.").

69. See Editor Survey Response from Boston College School of Law (Sept. 29, 2010); Editor Survey Response from University of California, Davis (Sept. 30, 2010); Editor Survey Response from American University Washington College of Law (July 6, 2010). The editor from Washington & Lee did not respond to this question but later indicated that the journal has discussed a potential disparity and is "carefully looking into this matter." See Editor Survey Response from Washington & Lee University School of Law (Dec. 19, 2010). Without passing any sort of judgment on the possible disparity at Washington & Lee, we commend this sort of conscious self-examination by journals and hope that more journals will engage in such undertakings.

according to our data collection.⁷⁰ The overall distribution of responses is detailed in Figure 8.⁷¹

Fig. 8: Editor Perception of Gender in Submissions and Acceptances



The data reveal interesting discrepancies in editors' perceptions. First, law review editors who responded to the survey were more likely to believe that more men submitted notes than they were to believe that more men's notes were selected. Twenty-seven percent of editors believed that "significantly more men" or "a few more men" submitted notes, while only 16% of editors believed that "significantly more men" or "a few more men" had their notes selected for publication. That disparity mirrored one in the percentage of responses expressing a belief that "about the same number of men and women" submitted notes—57%—and the percentage of responses expressing a belief that "about the same number of men and women" published notes—67%. These responses suggest that some note editors believe that a disparity exists in the rate at which men and women submit notes for publication, but that disparity is no longer evident in the notes that rise to the top and are eventually selected for publication.

Although our categories for this question were intentionally vague and did not correspond to particular percentages of men and women, it is striking how many editors believed that "about the same number" of men and women published notes at law reviews where men in fact published many more notes than did women. Editors expressing a belief in a more-or-less-equal gender ratio included those at the University of Virginia, where men published 75% of student notes during the ten-year time period we examined; Notre Dame, where men published 70% of notes; Michigan, where men published about 67% of student notes; William & Mary, where men published about 66% of notes;

70. See *supra* Part III.B.

71. Ohio State did not respond to the questions from which Figure 8 was created. See Editor Survey Response from The Ohio State University Moritz College of Law (Dec. 20, 2010).

Vanderbilt, where men published about 61% of notes; Northwestern, where men published about 59% of notes; and New York University, where men published about 59% of notes.

The editor at Cornell, the sole editor to answer that “significantly more men” are selected for publication, was correct in that assertion. Almost 70% of the notes published by the *Cornell Law Review* are authored by men.⁷² In a commendably self-reflective effort, Cornell recently examined its note selection practices and made some adjustments to its process, which—as we understand it—reduced the disparity, and likely resulted in the Cornell editor’s ability to give an accurate response to the question in our survey. Our primary point here, therefore, is that Cornell alone seemed to be aware of its disparity, although it was far from the only school responding to the survey whose process resulted in a significant disparity.

Of course, a journal’s failure to acknowledge a gender disparity in its rate of note publication may reflect the limitations of individual knowledge rather than obliviousness to a current disparity. The rate of publication by men and by women varies from year to year, so perhaps some editors’ responses reflected only their awareness of relatively even publication rates in the years for which they had personal knowledge rather than a marked disparity perceptible over the past decade. We therefore do not mean to fault any of the editors for inaccuracies in their own perceptions of their journal. Still, the lack of knowledge of an ongoing aggregate disparity suggests the need for formalized institutional record-keeping, which we will discuss further in Part VI.

Finally, we asked the editors if their journals had ever discussed gender disparity in note publication or membership and what they personally believed was the cause of the disparity. Six editors acknowledged that the journal had discussed gender disparity. In fact, the editor from Berkeley noted that the journal was in the process of collecting data on the issue. Some of the editors from journals that had not discussed gender disparity still noted that the journal had discussed diversity generally.⁷³ The editors gave several common responses to our question regarding a possible gender disparity. Many noted that they did not think a significant disparity actually existed or that they did not feel that they were in a position to observe a disparity even if one did exist. Those that did acknowledge a disparity tended to associate it with a larger male law student population generally.⁷⁴ One editor also suggested that women law

72. See *supra* Fig. 5, *infra* app. D.

73. The editor from UC Davis even noted that our survey had piqued their curiosity on the subject. See Editor Survey Response from University of California, Davis (Sept. 30, 2010).

74. See Editor Survey Response from New York University School of Law (Nov. 19, 2010) (“My sense is that gender disparities in membership usually track gender disparities in the overall class in the law school. I would suspect that past disparities in note publication reflect that more men historically pursued careers in legal teaching (as note publication is considered an important career step for those pursuing legal teaching jobs), but that is becoming less true. Last year more women than men published; this year so far there are more men but it will likely even out or perhaps end up with more

students may “self select” to not join a journal.⁷⁵ We will return to the viability of these various explanations in Part IV. First, however, we solicit perspectives from another group of stakeholders in the process: the note authors.

D. Author Survey

To examine the experiences and perspectives of students who published notes while in law school, we also created an online survey (“Author Survey”) regarding various aspects of the note publication process. For each school, we emailed the Author Survey to two authors for each of the ten years we examined, yielding a total of twenty authors from each school. In an effort to ensure randomness, we emailed the survey to the author of the first and last note published in each year.⁷⁶

The survey was sent from Nancy’s faculty email account. It identified her and indicated that she was conducting research into the student note publication process over the past ten years. It then provided recipients with a link to the survey. Because of Nancy’s previous published research regarding gender disparity in student note publication,⁷⁷ we think it possible that some respondents may have approached the survey with that issue in mind. However, neither the email inquiry nor the survey advanced any particular stance on gender and student note publication and as far as possible we sought to convey a neutral attitude toward those topics.

Out of 1020 emails sent, we received 252 responses—a response rate of about 25%. The responses came from authors at fifty-one schools. One hundred and sixty-three of the authors were male and 89 were female. The number of responses varied slightly from year to year, but we received at least ten responses for each year in our survey.

The initial questions of the Author Survey asked respondents to describe the note-writing process. These questions provided a useful complement to the Editor Survey by allowing us to examine authors’ perspectives on the variety of

women authors again -- but it is hard to guess at this point. In my experience women on the Law Review have been very motivated to be involved and take leadership roles, and their participation in note writing is probably part of that.”).

75. See Editor Survey Response from University of Colorado Law School (Dec. 15, 2010).

76. We collected email addresses for authors primarily using internet research. Googling the author’s name often yielded a link to a law firm website or an academic homepage. LinkedIn and Facebook also yielded contact information for some authors. If we were unable to obtain contact information for one of the selected authors, we would move on to an adjacent author in the same year (i.e., the author of the second note rather than the first, or the next to last note rather than the last). It seems likely that as a result of our search methodology, practicing attorneys—particularly those affiliated with larger firms—and academics are overrepresented in our sample, while government attorneys, current law clerks, and individuals who no longer practice are somewhat underrepresented because their contact information is less readily available online. With that said, we see no obvious way in which the responses of these individuals would differ from those of the participants in our survey so as to significantly alter the quantitative data, and the qualitative data are valuable regardless.

77. Leong, *supra* note 10, at 284-85.

processes that journals employ to guide prospective authors through the note-writing process and, subsequently, to select and edit notes.

Two aspects of the responses describing the process are particularly salient to our purposes here. First, the responses provided useful insight into how successful note authors decided on their note topics. About 40% indicated that a professor suggested the topic; 50% indicated that they learned about the topic in a class, and 72% indicated that they had previous experience in the topic area.⁷⁸

Second, the responses emphasize the important role of professors in the note-writing process. Over 70% of respondents indicated that a professor provided guidance on the initial topic, including the 40% who stated that a professor actually suggested the topic; 34% reported that a professor reviewed drafts for technical and grammatical errors; and over 60% reported that a professor reviewed drafts with substantive comments.⁷⁹ Clearly, professor involvement vitally influenced many published notes, a phenomenon we will discuss further in Part V.

The next set of questions in the Author Survey examined the benefits derived from note publication. More than two-thirds of note authors reported with certainty that their note helped them in their careers. The benefits authors described ranged widely. About half of authors stated that their note played a positive role in helping them obtain jobs. One stated that his publication “helped give me a lot of offers to choose from. Potential employers seemed impressed that I had gotten a Note published addressing a topic in my chosen field of law. No one seemed to care much about the specific content, but rather took its existence as proof that I could write.”⁸⁰ Another author went so far as to indicate that a note was a near-prerequisite: “I think most people at my firm had a note published so I expect it helped me in getting hired.”⁸¹ Several specifically stated that the note topic was discussed during interviews.⁸² Forty-five authors (18%) indicated that their note helped them obtain a clerkship,⁸³ while thirty (12%) stated that it helped them secure post-graduate employment at a law firm. Once employed, the note helped build relationships with senior colleagues: one 2010 graduate explained that “[p]artners at my firm have sought me out to work on helping them co-author their own articles.”⁸⁴

78. Respondents could select more than one option, so the percentages add up to more than one hundred.

79. Respondents could select more than one option, so the percentages add up to more than one hundred.

80. Author Survey (Sept. 17, 2010 at 14:19:19).

81. Author Survey (Nov. 9, 2010 at 16:45:24).

82. Author Survey (Nov. 30, 2010 at 16:01:09) (“Interviewers inquired about the article on a number of occasions.”).

83. One author specifically noted that “the judge who hired me read [the note] carefully and asked me about it at the interview.” Author Survey (Dec. 15, 2010 at 13:44:26).

84. Author Survey (Oct. 28, 2010 at 10:06:16).

Publishing a note seemed especially important for a career in academia: as one author indicated, “I have become a law professor, so having this first legal publication was key to initiating my scholarship.”⁸⁵ In general, publication “aided in demonstrating writing and organizational skills and the overall drive for success.”⁸⁶ The published note was, in short, a consummate “resume booster”⁸⁷; it helped authors “stand out from the crowd.”⁸⁸

Authors also attested to both the substantive knowledge and skills they acquired as a result of the publication experience. One response from a 2009 graduate indicated that the relationship between the note topic and the author’s practice area “has helped me to move up the learning curve at work at a fast pace.” Another explained that publishing a note “taught me to consider more thoughtfully the policy interests behind legal institutions.”⁸⁹ And one summarized simply: “[T]he process of preparing and publishing a note made me a better lawyer.”⁹⁰

Less tangibly, several authors described a sense of intellectual inclusion as a result of publishing their notes. One woman described the enjoyment she derived from writing her note, concluding, “Some of those late nights thinking about how to address adverse authority remain the happiest moments of my law school career.”⁹¹ Although these intellectual benefits are more difficult to quantify than success at obtaining prestigious clerkships or competitive law firm jobs, they are also important in instilling a law student’s sense of belonging to a professional and intellectual community.

Finally, a number of authors—some who had been out of school for several years—stated that they continued to reap benefits from the publication of their student notes. One individual, who graduated in 2000, explained: “As a practitioner, I try to publish as much as possible to try to increase my visibility and generate business. Working on a note in law school provided me with the skill set and inclination to publish.”⁹² For others, the merits of the note continues to inform legal practice: “[G]etting to know my topic backward and forward has given me a helpful font of inspiration—I often find myself returning to the footnotes as a reference point in my own briefing.”⁹³

The survey concluded with a few questions about the role of gender—if any—in various aspects of the law review and note publication experience. Authors expressed a wide range of responses to the survey questions relating to gender. As in the Editor Survey, the majority of respondents to the Author

85. Author Survey (Sept. 19, 2010 at 20:29:58).

86. Author Survey (Nov. 30, 2010 at 16:01:09).

87. Author Survey (Dec. 15, 2010 at 10:53:49).

88. Author Survey (Oct. 28, 2010 at 9:26:18).

89. Author Survey (Dec. 17, 2010 at 14:51:37).

90. Author Survey (Dec. 15, 2010 at 9:56:49).

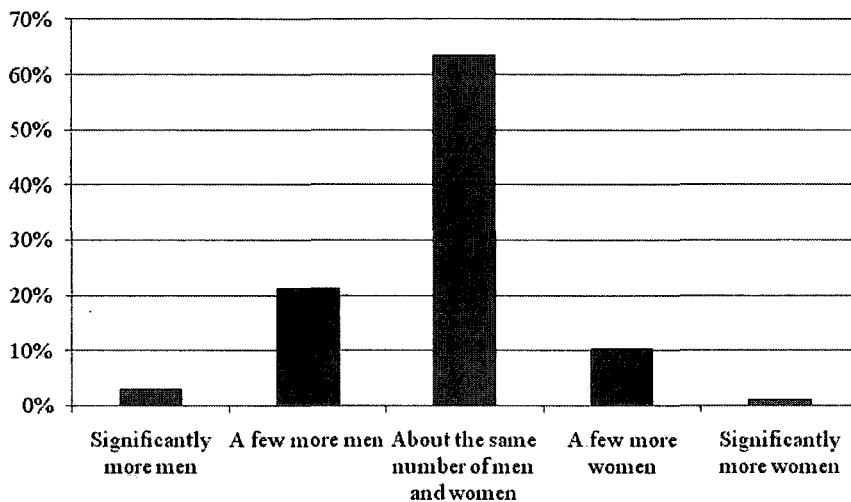
91. Author Survey (Nov. 29, 2010 at 15:59:07).

92. Author Survey (Nov. 30, 2010 at 11:58:13).

93. Author Survey (Nov. 28, 2010 at 12:52:26).

Survey—63%—believed that about the same number of men and women published notes. Twenty-one percent believed that a few more men published notes, while 11% believed that a few more women published notes. Interestingly, note authors appeared to be somewhat better attuned to gender disparities than their counterparts in the Editor Survey. For authors, perhaps going through the process of publication themselves triggered a greater awareness of who else was—and was not—publishing notes.

Fig. 9: Author Perception of Gender in Note Authorship



Although the majority of authors indicated that, to their recollection, their law review did not openly discuss gender, a few said that it did. One author explained that “a few women law review members were concerned about the low participation rate of women in the Board that replaced ours” and that “one woman voiced a desire that note publication decisions be made with gender in mind.”⁹⁴ Yet even after this concern was aired, “only a minority of women members felt this way, so while the Board acknowledged the gender disparity, we resolved not to do anything about it.”⁹⁵ An author at another law review stated candidly: “We did discuss it, and regularly made efforts to persuade more women to apply.”⁹⁶ On yet another law review, discussions took place after “a significantly greater percentage of men were asked to join law review than women”; subsequently, “several meetings were held, and historical data was obtained regarding the percentage of men and women admitted to law review each year.”⁹⁷ Another law review at a public institution discussed

94. Author Survey (Nov. 29, 2010 at 16:02:04).

95. *Id.*

96. Author Survey (Nov. 29, 2010 at 15:10:25).

97. Author Survey (Nov. 6, 2010 at 16:37:02); *see also* Author Survey (Nov. 16, 2010 at 19:40:38) (“[W]e were considering issues of diversity, and it was discussed that the writing portion of

whether it was *legal* under their state's constitution to strive for gender or racial balance.⁹⁸ And at one school, although the disparity was not discussed formally, "[i]nformally we would [discuss it]. I don't know that there was ever an official attempt to review."⁹⁹ One author summarized: "It was something that we were all aware of."¹⁰⁰

Perhaps most interesting were authors' responses to the following question: "In your view, did gender play an explicit or implicit role in any aspect of law review tryouts, membership, or note publication?" Our phrasing of this question is intentionally both broad and neutral, which allowed us to gauge students' preexisting assumptions about the role of gender in the process.

It is difficult for us to imagine how this question might be phrased more neutrally: it refers to gender, rather than asking whether men were advantaged relative to women in the note selection process. Indeed, the question does not reference either men or women. Yet several respondents automatically interpreted it to refer to discrimination against women. One respondent—who explicitly identified himself as a current professor—went so far as to state: "Well, the tenor of this question seems a little leading—suggesting that more men receive these opportunities."¹⁰¹

At the other end of the spectrum, some respondents interpreted the question as an inquiry into policies regarding diversity. Several described their law reviews' approaches to the incorporation of diversity factors in member selection. A typical response stated: "Gender was explicitly considered in selecting leadership positions for the following year, and it also may have played a role in initial law review membership selections."¹⁰²

Still others responded to the question by offering insights regarding intra-journal dynamics. At one law review, a respondent explained:

Our EIC was not open to comments from women or to feminist legal theory, and that caused some conflicts. The next year, the EIC was a woman who was open to feminist legal theory, and I think there were no gender-based conflicts. Fortunately, the head Notes editor was a woman and very well-respected, and I think that she helped prevent similar conflict within the Notes department.¹⁰³

Our survey prompted several vehement denials, some verging on openly hostile. One instructed us: "Don't go looking for gender issues where there are

the write-on competition was added to equalize the disparity between men and women. Apparently, when journal selection was solely based on GPA, the result was a disproportionate number of men.").

98. Author Survey (Nov. 23, 2010 at 11:59:33).

99. Author Survey (Dec. 15, 2010 at 11:51:26).

100. Author Survey (Nov. 8, 2010 at 12:21:12).

101. Author Survey (Sept. 19, 2010 at 20:29:58).

102. Author Survey (Nov. 23, 2010 at 11:41:35).

103. Author Survey (Nov. 23, 2010 at 15:59:15).

none. There are lots of more important things to do in this world.”¹⁰⁴ Only 32% of the notes published at that individual’s school were authored by women during the ten-year time period we studied; during the year that respondent graduated, that figure dropped to 14.8%. Another came from a man who asserted that at his law review, “there has been no observable gender disparity in any aspect of the membership or note review process for decades.” He continued: “If the point of this survey is to uncover lurking sexism in the dark hierarchies of legal institutions, that’s cool, but I think you will find more to talk about at Harvard and Columbia. I think that [school name redacted] is as devoid as any school of that sort of nonsense. . . . I can’t think of a more gender-neutral process short of a lottery.”¹⁰⁵ Despite this vaunted “gender-neutral process,” the respondent’s school in fact had a gender disparity statistically indistinguishable from that of (to use his example) Columbia: fewer than 35% of published notes were authored by women. Although the point of the survey was simply to examine the role of gender in student note publications at some schools, the disconnect between the state of affairs these responses portray and the state of affairs the data reveal provides a telling example of the lack of awareness of the gendered publication disparity.

Relatedly, the juxtaposition of the two questions about gender sometimes elicited provocative responses. One woman responded with a simple negative to the question regarding discussions about gender disparity, but then followed it with an equally clear indication that gender mattered: “There were many, many more males on law review than females. It was almost a 3 to 1 ratio of males to females. Men also tended to be the editor in chief. It had been more than 10 years since a woman was editor in chief.”¹⁰⁶ This statement invites a sobering realization: even at law reviews where some members are aware of gender disparities, that awareness does not always translate into discussion among law review members as a group. In order to provide a starting point for such discussions, we turn in the next section to explanations for the disparity.

IV. EXPLANATIONS

For the most part, the information we have gathered speaks for itself. We have presented that information as straightforwardly as possible to allow law review editors to evaluate the situation within their own journals and respond appropriately. The most important contribution of our project is the data set itself.

Still, we think it worthwhile to spend some time exploring the question of why women publish fewer notes than men. We believe that the answer is

104. Author Survey (Nov. 23, 2010 at 9:07:55).

105. Author Survey (Nov. 23, 2010 at 14:42:13).

106. Author Survey (Nov. 29, 2010 at 15:52:49).

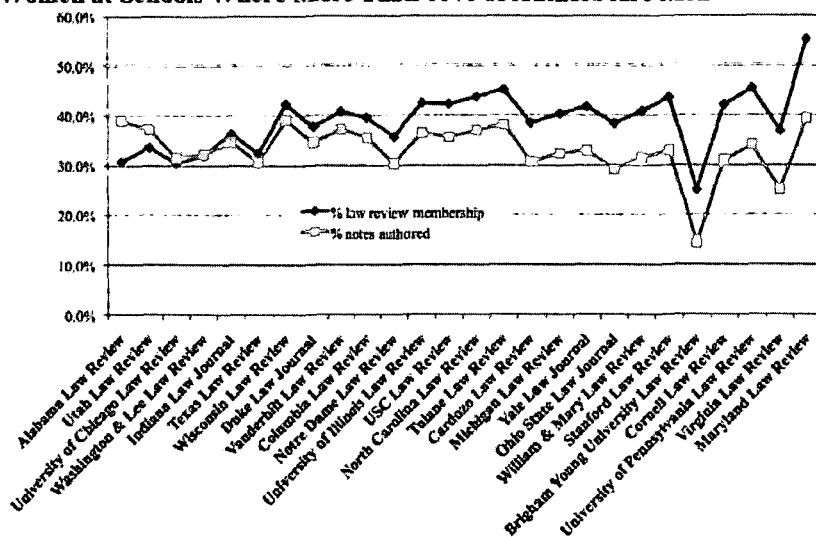
complicated and likely differs from one school to the next and from one year to the next at the same school. This Part, therefore, does not point to a single variable as the root cause of the gender disparity. Rather, it attempts to catalog a range of possibilities, emphasizing some and calling others into question, in order to provide a starting point for discussion among law review members.

A. Numerical Explanations

Perhaps the most obvious explanation for the disparity in note authorship is the disparity in law review membership. At schools where law review membership is a prerequisite to note publication, a membership disparity provides a hard limit on the number of women eligible to publish notes. And even at schools where law review membership is not a prerequisite, women who are not members of the law review might be less likely to publish notes in the law review as opposed to another journal with which they are involved, may be unaware of note submission deadlines because they are not involved with the law review, or may simply refuse to place themselves in a position allowing further rejection by an institution that may already have denied them membership.

The data suggest that law review membership accounts for some, but not all, of the disparity. Figure 10 tracks the percentage of women on law review and the percentage of notes authored by women at each law review in which women authored less than 40% of the student notes. At a few schools the percentage of notes published by women was actually greater than the percentage of women on law review. But at the vast majority of schools where women published few student notes, the percentage of notes authored by women was substantially less than the percentage of law review members who were women. As Figure 10 shows, the two percentages—unsurprisingly—tended to vary together. But the disparity in law review membership was an *incomplete* explanation for the disparity in student note publication.

Fig. 10: Law Review Membership and Student Note Publication by Women at Schools Where More Than 60% of Authors Are Men



Thus, the membership disparity does not fully explain the publication disparity at all schools. And even for those schools at which the membership disparity and the publication disparity are approximately equal, we note that describing the membership-based explanation as a “numerical” one is somewhat misleading. It simply asks another question: *why* is there a disparity in membership rates? A whole slew of qualitative explanations presents itself: perhaps women are less likely to succeed in the law review competition, perhaps women prefer to participate in other journals, or perhaps women prefer to participate in other activities.

All of these explanations, and others, likely play some role. For present purposes, however, we are more interested in looking to the explanations for the disparity *beyond* the disparity in membership. In other words, we accept that at most schools we are starting from the point of a certain gender disparity in membership, and we now want to know why there is a disparity, *on top of the membership disparity*, in the percentage of published notes authored by women. Why should a group of men and women—all of whom have demonstrated themselves capable of being selected for law review—publish notes at different, and sometimes vastly different, rates? The next section examines the explanations for that phenomenon.

B. Non-Numerical Explanations

The disparity in law review membership helps to explain the disparity in publication rates, but not at every school, and not completely even at those schools where it is a contributing factor. We therefore turn to qualitative hypotheses for further insight into the publication disparity.

We group these hypotheses into three categories: Authorial, Selective, and Institutional. Authorial hypotheses propose that something that women are doing, or not doing, accounts for the disparity. Selective hypotheses propose that something that note selection committees are doing, or not doing, accounts for the disparity. And Institutional hypotheses propose that structural factors endemic to law school itself are a cause of the disparity. A non-exhaustive list of such hypotheses includes the following:

Authorial:

- Fewer women law students are capable of writing a publishable student note.
- Fewer women law students attempt to write a publishable student note.
- Fewer women law students want to write a publishable student note.
- Fewer women law students have the time to write a publishable student note.

Selective:

- Law review editors are sexist and do not want to publish notes authored by women.
- Law review editors are subconsciously prejudiced against notes authored by women.
- Law review editors prefer topics that women are less likely to write about.
- Law review editors prefer writing styles that women are less likely to adopt.

Institutional:

- Women receive less information about the note-writing process and the law review membership selection process.
- Women receive less mentorship from faculty in the note-writing process.
- Women are alienated from law school more generally and thus less likely to participate in the membership selection process or the note-writing selection process.

In the following three subsections, we will briefly discuss each of these hypotheses and evaluate their relative plausibility. No hypothesis excludes any other, and any might serve as a partial explanation. We advance them collectively in order to provide law students, law reviews, and legal faculty with a starting point for examining the practices at their own institutions.

1. Authorial Hypotheses

One hypothesis is that women are less likely to write high quality notes that merit selection for publication. Put bluntly, we see no evidence to support this hypothesis. The large number of successful women academics indicates that many women are able to write publishable work. Indeed, many women law students do publish useful and insightful notes at the schools we examined—even at those with the greatest gender disparities. In the absence of any plausible evidence that women, as a broad category, lack the ability to write publishable work, we think it more useful to seek alternative explanations.

A more interesting hypothesis is the idea that fewer women authors *attempt* to write a publishable note. For our purposes, the lack of attempt to write a publishable note includes behavior ranging from the decision not even to begin writing to the decision not to submit a completed and polished product. Some data suggest that a lack of attempt by women may contribute to the disparity. For example, as Bashi and Iskander noted, men were much more likely than women to resubmit their notes following an initial rejection—37% of men compared to only 12% of women.¹⁰⁷ But what might explain this lack of attempt? Much research has documented women law students' comparative lack of confidence in their own abilities.¹⁰⁸ We can quite easily imagine that this lack of confidence translates into an unwillingness to engage with the note-publication process: Why undertake research if you do not think your work will be good enough to be published? Why submit your work if you are sure the response will be a rejection letter?

To better evaluate this hypothesis, we would need more data on submissions—what percentage of student notes submitted for publication are written by women? With the exception of the very small amount of data collected in previous research,¹⁰⁹ law reviews either do not collect such data or do not make them available. A useful first step, then, would be for journals to develop protocols requiring the collection of certain data regarding the authors of work submitted for publication. As we have mentioned, many journals are already in the process of collecting such data.¹¹⁰

107. Bashi & Iskander, *supra* note 13, at 425.

108. GUINIER, *supra* note 13; Neufeld, *supra* note 17, at 548.

109. Leong, *supra* note 10, at 287.

110. As Editor-in-Chief of the *American University Journal of Gender, Social Policy & Law*, I (Jennifer) was recently involved in the creation of such protocols during the member selection phase.

Perhaps most difficult is the possibility that women simply do not want to write student notes. One hypothesis is that women, in the aggregate, do not find the same satisfaction in contributing to legal discourse as do men, although we are skeptical of this gender stereotype for the same reasons we are skeptical of the idea that women are less able to write work of publishable quality. Indeed, even if we stereotype women as “less confrontational”—as some people might—it would seem that engaging in written discourse (rather than, say, mock trial team) would be more, not less, harmonious with that stereotype.

We think it more plausible that women do not want to write student notes because there are other things they want to do instead. Women may, for example, place higher value on participation in other activities—pro bono work, clinics, public service fundraising—than do men. They may view their contributions in these areas as more worthwhile than writing a student note that (they think) will only be read by a few people. Even if they do choose to put time and energy into a journal, women may engage with a specialty journal rather than the general-interest law review at their school. Journals focusing on law and gender, for example, have disproportionately female staffs.¹¹¹ While we do not wish to denigrate the considerable contributions of specialty journals generally, and journals focusing on women and gender in particular, it is a common assumption that general-interest law journals are more prestigious.¹¹² It is worth asking why women disproportionately choose to devote time to those specialty journals rather than the more prestigious general-interest journals—or, conversely, why specialty journals are in fact viewed as less prestigious by faculty, judges, practitioners, and students themselves.

Finally, there may be women who simply do not have the time to write a publishable note. Other responsibilities—family, work, childcare, housework—may literally preclude them from that possibility. Such women do not write notes because to do so would force them to neglect other responsibilities that they deem more important. To the extent that some women still assume more childcare and housework responsibilities than do their male partners,¹¹³ this

Both forms of data collection—during member selection and during note selection—yield useful information. We believe it is better, however, to ensure complete anonymity to avoid accusations of preferential treatment as well as the risk of implicit bias.

111. See, e.g., 2010-2011 Board, 34 HARV. J.L. & GENDER, <http://www.law.harvard.edu/students/orgs/jlg/next/staff.php> (last visited Oct. 12, 2011); 2008-2009 Editorial Board and Staff, 18 COLUM. J.GENDER & L., <http://www.columbia.edu/cu/jgl/staff.html> (last visited Oct. 12, 2011).

112. See, e.g., Sarah Tran, *Getting Published* (Jan. 9, 2009), <http://www.law.georgetown.edu/lawteaching/documents/GettingPublished.pdf> (“[F]lagship journals are generally more prestigious than specialty journals.”); Eugene Volokh, *Law Review Publication—Main at #40 School, or Specialty at #10 School?*, THE VOLOKH CONSPIRACY (June 7, 2007, 1:05 AM), <http://volokh.com/posts/1181174389.shtml> (acknowledging common question of whether it is better to publish in a “top ten” specialty journal or a “top forty” law review).

113. ECON. & STATISTICS ADMIN. & OFFICE OF MGMT. & BUDGET, WOMEN IN AMERICA: INDICATORS OF ECONOMIC AND SOCIAL WELL-BEING 28 (Mar. 2011), http://www.whitehouse.gov/sites/default/files/rss_viewer/Women_in_America.pdf.

explanation might account for some of the disparity. Given that most law students at the schools we studied are young and unmarried, however, we think this is an incomplete explanation.

2. *Selective Hypotheses*

A second set of hypotheses interrogates the note selection process and whether gender plays a role in that process. One hypothesis is that law review editors are overtly sexist and prefer notes authored by men. This crude account seems rather implausible in 2011, although we cannot completely rule out isolated instances of overt misogyny.¹¹⁴ A more nuanced account might question whether at least some law review editors harbor subconscious prejudices against women's competence. Social science research has found that even people who hold highly egalitarian beliefs nonetheless retain some implicit bias against women and have more difficulty viewing women as intelligent and qualified.¹¹⁵ At law reviews whose note selection processes are not anonymous, the knowledge that a woman authored the piece under review may—at the margin—have a subtle subconscious effect on editors' evaluation of the piece. Again, we would need to know more about submission rates to evaluate whether something like this is taking place, and those data are unfortunately unavailable. But the possibility of implicit bias adds another reason to prioritize collecting submissions data.

Another possibility is that note selection committees prefer certain subject areas, and men are more likely to write about those subject areas. The conventional wisdom is that note selection committees *do* have certain subject-matter preferences—they prefer topics they know something about, like civil procedure, constitutional law, and criminal law, and are more skeptical of specialized topics outside the first-year curriculum, such as international law, patents, and copyright.¹¹⁶ Conversely, they may prefer more specialized topics

114. We anticipate that some people will think we should investigate this issue by examining whether note selection committees are predominantly male. While this might provide an interesting avenue for investigation, male status is not a prerequisite for sexism against women. Both men and women can be misogynists. As just one of myriad possible examples, consider the words of Ann Coulter: "If we took away women's right to vote, we'd never have to worry about another Democrat [sic] president. It's kind of a pipe dream, it's a personal fantasy of mine, but I don't think it's going to happen." *Coulter Culture*, N.Y. OBSERVER MAG. (Oct. 2, 2007, 8:28 AM), <http://www.observer.com/2007/coulter-culture>.

115. Consider, for example, a straightforward study by researchers at Harvard that finds that people more easily associate women with family and men with career. See PROJECT IMPLICIT, <http://implicit.harvard.edu/implicit/> (last visited Oct. 12, 2011).

116. See, e.g., David Schraub, *Overcoming Articles Adversity*, CONCURRING OPINIONS (Aug. 13, 2011), <http://www.concurringopinions.com> (asserting, from the perspective of a former articles editor for the *University of Chicago Law Review*: "Constitutional law has an advantage because essentially every journal has somebody who is interested in constitutional law topics. Corporations, not so much."). I (Nancy) have heard many colleagues bemoan the greater difficulties facing those of us

because either the law review or the law school is recognized for its students' or faculty members work in that area.¹¹⁷ They may also consider the interplay between a selected note and the remaining content of the issue. And they may consider some topics—constitutional law is the paradigmatic example—more important than others. Our research did uncover some differences in topic selection between men and women, although no clear picture emerged from the data in this area.¹¹⁸ Complicating the picture is a possible correlation between note quality and topic selection: are more proficient authors more likely to choose certain topics over others? Unfortunately we cannot provide definitive answers to these questions, but again we encourage law reviews to track the topic areas of selected and rejected notes and to examine the data for patterns.

Finally, it is worth asking whether there is something about the way women write that is less appealing to selection committees. Are women more likely to use the first person? Are they less likely to adopt rigid structures? We have no empirical data on this point, but several colleagues have suggested it to me (Nancy) as an explanation, and programs such as Gender Guesser purport to be able to differentiate between writing by men and women with up to seventy percent accuracy.¹¹⁹ The intuition that men and women, in the aggregate, write differently—and the idea that this difference might result in the publication disparity—might therefore bear investigation.

3. *Institutional Hypotheses*

In *A Noteworthy Absence*, I (Nancy) proposed alienation from the law school experience as one explanation for women's disproportionately low rate of note publication.¹²⁰ Women, I argued, felt alienated by the classroom experience and the competitive environment of many law schools, and they were thus more likely to distance themselves from the law school itself. This might affect their ability to publish notes in many ways: they might be less likely to hear about the law review competition at all, they might be less likely to gain insider information that would help them perform well in that competition, they might be less likely to hear about the note-writing process, they might be less likely to gain insider information that would help them write notes likely to be selected. While we need not retread that territory here, we wish to reaffirm that women law students' generalized alienation from the law

who publish in more specialized areas, and if accomplished faculty in these areas have difficulty placing work, we can imagine that law students do as well.

117. This may also explain why so-called "specialized topics" appear frequently enough to be included in our list of high volume subject areas. See *supra* Part III.B.

118. See *supra* Part III.D.

119. *Gender Guesser*, HACKER FACTOR, <http://www.hackerfactor.com/GenderGuesser.php> (last visited Oct. 12, 2011).

120. Leong, *supra* note 10, at 287.

school as an institution may manifest itself quite specifically in their lagging note publication rates.

Student engagement plays a central role in this hypothesis. Women report less contact with faculty than do men.¹²¹ They also report more intimidation by faculty members,¹²² more hesitation to engage in a range of interactions with faculty (over email, at office hours, etc.),¹²³ and less likelihood of having a faculty member they turn to as a mentor.¹²⁴ Without faculty contact and mentorship, women's chances of producing a publishable note may dwindle: 40% of respondents to the Author Survey reported that a professor suggested their note topic, and over 70% of respondents stated that a professor was involved with the writing of their note in some way, such as reading a draft or offering substantive suggestions.¹²⁵ Of course, we do not know what percentage of authors whose notes were not selected for publication received input from professors, but it seems distinctly unlikely that professorial advice places authors at a disadvantage.

One popular misconception is that the disproportionately negative experiences of women in law school stem from the fact that most law faculties are still predominantly comprised of men. Women faculty, the assumption goes, are more likely to mentor women law students, and women law students are more likely to seek out women faculty as mentors.¹²⁶ This assumption does not seem entirely unreasonable: many people are more comfortable seeking mentorship from those whom they perceive as similar to themselves in some way. But the assumption also fails to challenge the idea that men cannot mentor women—an idea that we think is worth challenging. We think that faculty men have an equal responsibility to mentor women students, even if doing so comes less naturally to both people in the mentoring relationship. We recognize that the relationship between men professors and women law students is more fraught, given current sensitivity to sexual harassment and, perhaps, discomfort with the mentoring relationship from both sides. But that is hardly a reason to

121. See GUINIER, *supra* note 13; Bowers, *supra* note 17, at 130; Neufeld, *supra* note 17, at 284.

122. See *LSSSE 2010 Mean Comparisons Report*, LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, http://lssse.iub.edu/pdf/2010/LSSSE_2010_Mean_Comparisons%28Lssseville%20Law%29.pdf (finding that women are less likely than men to discuss assignments with their professors).

123. Bashi & Iskander, *supra* note 13, at 426.

124. *Id.*

125. See *supra* Part III.D.

126. After the publication of *A Noteworthy Absence*, I (Nancy) received an email from a smart and sympathetic colleague who suggested that I perform statistical analysis comparing the rate at which women law students publish notes with the percentage of female faculty to see whether there is a correlation. Perhaps there would be a correlation, but we think such analysis somewhat inapt because it affirms the notion that women mentor women—indeed, it implicitly allows men to disclaim responsibility when women students underperform. We prefer to challenge that notion by emphasizing that all law students deserve and should receive mentorship, and that such mentorship can come from both male and female faculty members.

forgo any attempt at cross-gender mentoring; indeed, it militates in favor of increased time and attention to strategies for improving such relationships.¹²⁷

V. IMPLICATIONS

We pause for a moment to ask why these disparities matter in the first place. Should it trouble us that women publish fewer student notes than men? We think the disparities do matter, and the reason they matter is that the law school experience does not exist in a vacuum. Indeed, research has repeatedly demonstrated that experiences in law school are indicative of future experiences in a legal career.¹²⁸ Publication as a student is one element of this experience that contributes not only to success in finding a job in almost all areas of law, but also continues to be relevant throughout one's career.¹²⁹ We see the advantages of student note publication in several legal employment settings, including law firms, clerkships, government work, and academia. We will address the connection between our data and each of these areas in turn. The gender disparity in note publication is not necessarily the but-for cause of the continued disparities between men and women in the legal profession. But authoring a student note may have dramatic consequences for an individual student's career. Consequently, the disparity between the publication rates of men and women should matter to various stakeholders in the note publication process.

A. Judicial Clerkships

Judicial clerkships are a valuable experience in and of themselves: many seasoned attorneys describe the year they spent working closely with a judge as one of the most exciting and intellectually engaging of their career. Moreover, the clerkship can provide a valuable stepping stone, both as an independent credential and as the result of the judge's connections and mentorship. In recent years, a record number of law students and lawyers have applied for clerkships at the federal level,¹³⁰ and although no national data is available, it seems likely that a similar trend has occurred for state court judges. NALP (formerly known as the National Association for Law Placement) research indicates that men

127. Based on our firsthand experience, this can be done. We have both been the beneficiaries of mentorship by both men and women, and we know many other women who have enjoyed similar benefits.

128. See generally GUINIER, *supra* note 13.

129. See *supra* Part III.D.

130. See Martha Nell, *Deluged with Clerkship Apps, Some Judges Don't Look at All of Them*, ABA J. (Jan. 19, 2010), http://www.abajournal.com/news/article/deluged_with_clerkship_apps_some_federal_judges_dont_look_at_all_of_them/ (reporting a 66% increase in federal clerkship applications over the previous year).

have consistently received more federal clerkships over the last twenty years.¹³¹ Other research has indicated that men far outnumber women as Supreme Court clerks.¹³²

Meaningful law review experience is one well-recognized characteristic that judges look for in a candidate.¹³³ Because women represent less than half of law review members, they are already disadvantaged.¹³⁴ This, compounded with many judges' desire for the substantive experience that student note publication demonstrates, diminishes women's chances of obtaining any clerkship, let alone one with a federal judge or "feeder" judge for the Supreme Court.

Women may be at a disadvantage when applying for judicial clerkships solely because they lack a "publication" line on their resume—judges may be more interested in candidates whose publications demonstrate their proven writing abilities. Or the lack of note publication may prove disadvantageous in the application process in other ways. During interviews with judges, a published student note can provide a topic of conversation in which an applicant may impress a judge by showcasing her substantive expertise. Several respondents to our Author Survey indicated that judges asked about their student notes during their interviews, and that was certainly my (Nancy's) experience.¹³⁵ Thus, even for women whose other credentials enable them to secure an interview for a clerkship, the lack of student note publication may serve as a disadvantage in the interview itself.

The effect of student note publication may manifest itself in the clerkship process in more indirect ways as well. Women are underrepresented at the top of law review mastheads in comparison to their proportion in the student body of their schools.¹³⁶ This itself results from the disparity in student note publication: students who are selected for publication may be more likely to be selected to the law review's editorial or executive board due to their writing and editing skills, as publication experience signals both commitment and facility with law-review-related tasks to other law review members.¹³⁷ This disproportionately low representation on law review editorial boards then

131. *A Demographic Profile of Judicial Clerks*, NALP BULLETIN (June 2008), <http://www.nalp.org/jun2008demographicprofile>.

132. David H. Kaye & Joseph Gastwirth, *Where Have All the Women Gone? The Gender Gap in Supreme Court Clerkships*, 49 JURIMETRICS J. 411, 414 (2009) (noting that for the past decade, the number of male Supreme Court clerks has been double the number of female clerks).

133. See, e.g., *id.*

134. See *supra* Part III.A. Although specialty journal membership may also signal competence and substantive expertise to judges, in my (Nancy's) experience many judges still look at membership on a school's general interest law review as an important indicator of qualification.

135. See *infra* Part III.D.

136. See Kaye & Gastwirth, *supra* note 132, at 416 n.23 (stating that at the schools that produced the most Supreme Court clerks between 1999 and 2005, only 39% of editors-in-chief of the general interest law review were women).

137. This assertion is based on my (Jennifer's) experience and warrants additional research.

disadvantages women with judges who value leadership on law review as one indication of qualification for a clerkship.

B. Practice

Both law firms and government employers often consider note publication when making hiring decisions. In examining applications from law students seeking summer or post-graduate positions, law firms often view note publication as an important asset. It demonstrates excellent writing and analytical skills—two characteristics that firms desire in associates.¹³⁸ Many respondents to our Author Survey believed that their note helped their resume stand out, and in some instances was an informal prerequisite: recall the words of the respondent who stated, “I think most people at my firm had a note published so I expect it helped me in getting hired.”¹³⁹ Especially during challenging economic times, legal employers must rely on indicators to help them sift through the avalanche of applications flooding their in-boxes. A line on a resume indicating that an applicant has been published is one such indicator: it connotes expertise in an area, writing ability, and the tenacity to complete a substantial written task. If women are less likely to have this line on their resume, in the aggregate they will be less likely to secure a position at a firm. The note publication disparity requires women to acquire additional experience to demonstrate the skills that simply getting published reflects to employers, and opportunities for such experience are limited.

Women who enter large law firms are already less likely to advance as far as their male cohorts. Women still make up less than one fifth of the partners at large firms.¹⁴⁰ Research has found that their opportunities continue to be limited by gender stereotypes, inadequate support and mentoring networks, and inflexibilities in law firm work schedules and structure.¹⁴¹ The disadvantage of not being published as students creates additional barriers to women’s success in law firms.

138. Given the data we received from law review editors, we believe that variations in the note writing processes between schools may impact the veracity of this statement. We use this explanation because it is commonly believed by employers themselves.

139. Author Survey (Nov. 9, 2010 at 16:45:24); *see also* Author Survey (Nov. 23, 2010 at 09:07:55).

140. Patricia Gillette, *Lack of Self-Promotion Hurts Women in Large Firms*, THE AM LAW DAILY (July 7, 2009, 1:09 PM), <http://www.lawjobs.com/newsandviews/LawArticle.jsp?id=1202432112783&FORM=ZZNR&slreturn=1&hbxlogin=1>. Although we recognize the argument that this percentage may be the result of otherwise qualified women opting for the “mommy track,” we reject the notion that this completely explains the disparity. In fact, law firms’ continued unwillingness to accommodate any attorney seeking to have more control over the integration of their work and personal lives is a significant contributing factor. *See* Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001, 1008-13 (2002).

141. *See generally* Rhode, *supra* note 140.

Some have argued that the gender disparity in publication rates and women's lack of advancement in the law firm setting are both caused by characteristics often associated with women, such as difficulty with self-promotion, hesitancy to take on difficult tasks, or self-selection to opt out of career development activities.¹⁴² But given the disparity we have documented in the acquisition of two concrete and important credentials—law review membership status and student note publication—we would be surprised if there were not some disparity in women's career trajectories, including law firm success. In short, the trends identified in our research suggest at least one potential cause of the continued disparity in advancement in law firms.

Note publication also matters for those who wish to pursue careers in the public sector, although the implications are less clear than in the private sector. Government ethics and confidentiality requirements make the potential implications of publication as a student dependent on individual circumstances. Competitive governmental hiring programs such as the United States Department of Justice Honors Program select law students using criteria similar to those used by large firms or judges—school ranking, grades, and participation in law review or other extracurricular activities. Selection processes for such programs may also be dictated by administrative policies or by department-specific requirements. In contrast to evaluation for private-sector positions, the value of a published note is not an unmitigated positive in governmental hiring: although student note authorship certainly demonstrates desirable writing and analysis skills, it may also reflect a point of view on a certain subject matter that is contrary to the policy of a particular agency or administration. Thus, while note publication may play an important role in hiring for the DOJ Honors Program and similar programs generally, whether a note bolsters a candidate's application may hinge to some degree on the point of view expressed in the note.¹⁴³

C. Academia

Note publication as a student unquestionably provides a useful stepping-stone on the pathway to legal academia. In the current model of legal academic hiring, authorities agree that publication matters more than almost anything else.¹⁴⁴ By publishing while still in law school, a prospective professor acquires

142. Self-promotion among women attorneys is an important topic that warrants further discussion. For one perspective on this issue, see Gillette, *supra* note 140. See also Anna T. Collins, *The 'Opt-In Project' Inspires Change in the Legal Profession*, THE GLASS HAMMER (Mar. 5, 2009), <http://www.theglasshammer.com/news/2009/03/05/the-%E2%80%99Opt-in-project%E2%80%99D-inspires-change-in-the-legal-profession/>.

143. We encourage further research on this point, especially given the distribution of topic areas on which men and women decide to write.

144. See, e.g., Columbia Law School, *Almost Everything You Need To Know About Law Teaching*, http://www.law.columbia.edu/careers/law_teaching/Everything (last visited Oct. 12, 2011).

a credential that will later signal to faculty hiring committees that the note author is capable of producing publishable written work.

Preliminary empirical research supports this intuition. In research that we will present in detail elsewhere, we gathered biographical data on all law professors hired between 1999 and 2009.¹⁴⁵ Attendance at a top-ten law school was the characteristic shared by more newly-hired professors than any other. The second most commonly shared characteristic was that of having published a note in their school's general-interest law review. That characteristic was more common than doing a clerkship at any level (or at all levels combined); more common than doing additional graduate study; more common than having secured a fellowship prior to entering a tenure-track position; more common even than having practiced law.

This research does not, of course, prove that note publication improves one's odds at becoming a professor, nor does it demonstrate any causal link—it might be the case, for example, that those destined or determined to become professors are simply more likely to write notes, not that writing a note affirmatively helps someone become a professor. Still, we should pause before dismissing a characteristic shared by so many new academic hires. If note publication does help to launch a new scholar, and more men than women publish notes, it suggests strongly that more men than women will secure tenure-track faculty positions and the current gender disparity in legal academia will continue to replicate itself.¹⁴⁶

VI. PRESCRIPTIONS AND CONCLUSION

Our goal here is assuredly not to place blame on anyone for the disparities identified in our research: not on individuals, not on law reviews, not on faculty members, not on institutions. Indeed, we have devoted much of this Article to an attempt to identify a wide range of explanations and implications for this phenomenon because its magnitude and longevity suggests that there is no single culprit. But we encourage the stakeholders in this process to take these results under consideration and respond accordingly.

First, we encourage law review editors to look inward to their programs, policies, and practices—both formal and informal. Our research reveals that most editors are not aware that a gender disparity in fact exists, and that their

(emphasizing importance of publication); Orin Kerr, *The Long Road to Being a Law Professor*, THE VOLOKH CONSPIRACY (Mar. 7, 2005, 12:24 AM) http://volokh.com/posts/chain_1110176668.shtml (explaining that the “hardest part” of getting a teaching job is publishing scholarly work); Randy Barnett, Comment on *The Long Road to Being a Law Professor* THE VOLOKH CONSPIRACY (Mar. 9, 2005, 5:09 PM) http://volokh.com/posts/chain_1110176668.shtml (noting that failure to publish a note while on journal “is taken as a negative sign”).

145. Data on file with authors. We will explore this finding in more detail in future work.

146. DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* (1982).

automatic assumptions are that it does not.¹⁴⁷ The critical first step, then, is for editors to acknowledge that the gender disparity *does exist*—indeed, we now have a decade’s worth of evidence to prove that this is so—and then to evaluate on an ongoing basis what they are going to do about it.

Armed with the data we have gathered about institutions of legal education, editors should investigate and identify institutional and circumstantial causes for the trends in their individual publications. Where possible, we hope that editors will implement changes to their policies to alleviate disparities. The solution may differ from one journal to the next: at one journal, simply making all members aware of the disparity may cure it; at another, note editors may need to take a hard look at their preference for or against certain topics; at still another, perhaps membership criteria must be evaluated so as not to cut off publication opportunities for women at the selection phase. We think that collecting submissions data is a critical task for *all* law reviews; one of the lingering gaps in the note publication story is the lack of quantitative data about submissions, and having that data will allow law reviews to better evaluate their practices. We are confident that smart and talented law review editors are more than up to this self-reflective task.

Next, we emphasize the importance of involvement by the professional academic community—both traditional doctrinal faculty and legal writing faculty. The academic community should investigate this disparity further within their home institutions and should look critically at the student populations that they teach and mentor. Professors serve as advisors to journals and—as our research has shown—play a critical role in aiding would-be authors with their notes.¹⁴⁸ As a result, they are in a unique position to promote an understanding and evaluation of the disparity we have identified. We encourage professors to take advantage of their position of power and help to remedy the disparity. Again, the solution will vary from school to school: at some schools, simply encouraging women to convert promising seminar papers into student notes may suffice; at others, law review advisors may need to engage actively with student editors to help them devise internal protocols to address the gender disparity.

Last but not least, we hope that our research will encourage individual women to reflect upon their own decisions to seek out the opportunity to be on law review, submit pieces for publication, and write more generally. We can testify firsthand to the intellectual satisfaction and professional benefit of legal research and publication, and we are certain that our law student colleagues would experience similar benefits. We welcome further discussion of this research and topic area and look forward to tracking this trend in the future.

147. See *supra* Part III.C.

148. See *supra* Part III.D.

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2009 Rank	School	2010 Rank	School
1	Yale University	1	Yale University
2	Harvard University	2	Harvard University
3	Stanford University	3	Stanford University
4	Columbia University	4	Columbia University
5	New York University	5	University of Chicago
6	University of California, Berkeley	6	New York University
6	University of Chicago	7	University of California, Berkeley
8	University of Pennsylvania	7	University of Pennsylvania
9	University of Michigan-Ann Arbor	9	University of Michigan-Ann Arbor
10	Duke University	10	University of Virginia
10	Northwestern University	11	Duke University
10	University of Virginia	11	Northwestern University
13	Cornell University	13	Cornell University
14	Georgetown University	14	Georgetown University
15	University of California, Los Angeles	15	University of California, Los Angeles
15	University of Texas at Austin	15	University of Texas at Austin
17	Vanderbilt University	17	Vanderbilt University
18	University of Southern California	18	University of Southern California
19	Washington University in St. Louis	19	Washington University in St. Louis
20	Boston University	20	George Washington University
20	Emory University	21	University of Illinois
20	University of Minnesota	22	Boston University
23	Indiana University	22	Emory University
23	University of Illinois	22	University of Minnesota
23	University of Notre Dame	22	University of Notre Dame
26	Boston College	26	University of Iowa
26	University of Iowa	27	Indiana University
28	College of William & Mary	28	Boston College
28	George Washington University	28	College of William & Mary
30	Fordham University	28	University of California, Davis
30	University of Alabama	28	University of Georgia
30	University of North Carolina at Chapel Hill	28	University of North Carolina at Chapel Hill
30	University of Washington	28	University of Wisconsin-Madison
30	Washington & Lee University	34	Fordham University
35	Ohio State University	34	Ohio State University
35	University of California, Davis	34	University of Washington
35	University of Georgia	34	Washington & Lee University
35	University of Wisconsin-Madison	38	Arizona State University
39	University of California, Hastings	38	University of Alabama
40	Wake Forest University	38	University of Colorado-Boulder
41	Brigham Young University	38	Wake Forest University
41	George Mason University	42	Brigham Young University
43	University of Arizona	42	George Mason University
43	University of Maryland	42	University of Arizona
45	American University Washington College of Law	42	University of California, Hastings
45	Tulane University	42	University of Utah
45	University of Colorado-Boulder	47	University of Florida
45	University of Utah	48	American University Washington College of Law
49	Southern Methodist University	48	Southern Methodist University
49	Yeshiva University (Cardozo)	48	Tulane University
		48	University of Maryland

149. *The Top Law Schools*, U.S. NEWS & WORLD REPORT, May 1, 2009, at 74.150. *The Top Law Schools*, U.S. NEWS & WORLD REPORT, May 1, 2010, at 74.

Appendix B: School Enrollment Data

School	# Women	# Men	% Women	% Men
University of Alabama	1991	3212	38%	62%
American University Washington College of Law	8202	5838	58%	42%
University of Arizona	1393	1387	50%	50%
Arizona State University	2648	2977	47%	53%
Boston College	4022	4017	50%	50%
Boston University	4319	4159	51%	49%
Brigham Young University	1636	3058	35%	65%
Yeshiva University (Cardozo)	4988	5118	49%	51%
University of Chicago	2528	3390	43%	57%
University of Colorado - Boulder	2549	2441	51%	49%
Columbia University	5578	6476	46%	54%
Cornell University	2794	2919	49%	51%
Duke University	2949	3489	46%	54%
Emory University	3421	3313	51%	49%
University of Florida	5694	6333	47%	53%
Fordham University	7172	7831	48%	52%
George Mason University	2930	4398	40%	60%
George Washington University	7094	8608	45%	55%
Georgetown University	9262	10547	47%	53%
University of Georgia	3177	3449	48%	52%
University of Illinois	2616	3775	41%	59%
Indiana University	2581	3761	41%	59%
University of Iowa	3117	3632	46%	54%
University of Maryland	4714	3834	55%	45%
University of Michigan, Ann Arbor	4925	6389	44%	56%
University of Minnesota	3445	4190	45%	55%
University of North Carolina at Chapel Hill	3692	3629	50%	50%
Northwestern University	3453	3807	48%	52%
University of Notre Dame	2275	3243	41%	59%
New York University	6577	7144	48%	52%
Ohio State University	3086	3780	45%	55%
University of Pennsylvania	3679	4190	47%	53%
Southern Methodist University	3943	4546	46%	54%
Stanford University	2512	2853	47%	53%
University of Texas at Austin	6336	7745	45%	55%
Tulane University	4405	4726	48%	52%

University of Washington	2976	2296	56%	44%
University of California, Berkeley	5124	3670	58%	42%
University of California, Davis	3080	2463	56%	44%
University of California, Hastings	6485	5716	53%	47%
University of California, Los Angeles	4853	4882	50%	50%
University of Southern California	2971	3223	48%	52%
University of Utah	1545	2384	39%	61%
Vanderbilt University	2781	3145	47%	53%
University of Virginia	4625	6445	42%	58%
Wake Forest University	2072	2657	44%	56%
Washington & Lee University	1582	2232	41%	59%
Washington University in St. Louis	3192	4209	43%	57%
College of William and Mary	2604	3193	45%	55%
University of Wisconsin - Madison	3876	4418	47%	53%
Yale University	2750	3108	47%	53%
All Schools	196,219	218,245	47%	53%

Appendix C: Law Review Volume Information

Ranking	School	Type ¹⁵¹	Volumes
1	Yale Law Journal	2	109-18
2	Harvard Law Review	2	113-22
3	Stanford Law Review	2	52-61
4	Columbia Law Review	1	99.6-109.5 (Oct. 1999-June 2009)
5	New York University Law Review	1	74.4-84.3 (Oct. 1999- June 2009)
6	California Law Review	1	87.4-97.3 (July 1999-June 2009)
6	University of Chicago Law Review	1	66.4-76.3 (Fall 1999-Summer 2009)
8	University of Pennsylvania Law Review	2	148-57
9	Michigan Law Review	2	98-107
10	Duke Law Journal	2	49-58
10	Northwestern University Law Review	2	94-103.3 (Fall 1999-Summer 2009)
10	Virginia Law Review	1	85.5-95.4 (Aug. 1999-June 2009)
13	Cornell Law Review	2	85-94
14	Georgetown Law Journal	2	88-97
15	Texas Law Review	2	78-87
15	UCLA Law Review	2	47-56
17	Vanderbilt Law Review	1	52.5-62.4 (Oct. 1999-Apr. 2009)
18	Southern California Law Review	2	73-82
19	Washington University Law Review	1→2	77.3-96 (Fall 1999 through 2008-2009; shift to six issues annually)
20	Minnesota Law Review	2	84-93
20	Emory Law Journal	1	48.4-58.3 (Fall 1999-Summer 2009)
20	Boston University Law Review	1	79.4-89.3 (Oct. 1999-June 2009)
23	Indiana Law Journal	2	74.4-84.3 (Fall 1999-Summer 2009)
23	Notre Dame Law Review	2	75-84
23	University of Illinois Law Review	1	1999.3-2009.4
26	Boston College Law Review	1→2	41-50.3 (through May 2009)
26	Iowa Law Review	2	85-94
28	George Washington Law Review	2	68-77
28	William and Mary Law Review	2	41-50
30	Alabama Law Review	1	51-60

151. The schools coded "1" number volumes according to the calendar year; those coded "2" number volumes according to the academic year.

30	Fordham Law Review	2	68-77
30	North Carolina Law Review	2	78-87
30	Washington and Lee Law Review	1	56.4-66.3 (Fall 1999-Summer 2009)
30	Washington Law Review	1	74.4-84.2 (October 1999-May 2009)
35	Georgia Law Review	2	34-43
35	Ohio State Law Journal	1	60.4-70.3
35	Wisconsin Law Review	1	1999.5-2009.4
35	University of California Davis Law Review	2	33-42
39	Hastings Law Journal	2	51-60
40	Wake Forest Law Review	1	34.3-44.2
41	Brigham Young University Law Review	1	1999.3-2009.4 (shift from four to six issues annually)
41	George Mason Law Review	2	8-16 (Note: No volume for 2005-2006)
43	Arizona Law Review	1	41.3-51.3
45	American University Law Review	2	49-58
45	Tulane Law Review	2	74-83
45	University of Colorado Law Review	1	70.3-80.2
45	Utah Law Review	1	1999.3-2009.2
45	Maryland Law Review	1→2	58.3-68 (switched format in 2006)
49	Southern Methodist University Law Review	1	52.3-62.2 (Summer 1999-Spring 2009)
49	Cardozo Law Review	2	21-30
50	Florida Law Review	1	51.4-61.3 (Sept. 1999-July 2009)
50	Arizona State Law Journal	1	31.3-41.2 (Fall 1999-Summer 2009)

Appendix D: Law Review Membership Data by School¹⁵²

Journal	% Women	% Men	% Unknown	# Women	# Men	# Unknown	Total
Yale Law Journal	41.7%	57.2%	1.2%	536	735	15	1286
Harvard Law Review	35.2%	63.0%	1.8%	296	529	15	840
Stanford Law Review	43.6%	54.4%	1.9%	394	492	17	904
Columbia Law Review	39.5%	60.0%	0.5%	344	522	4	870
New York University Law Review	43.6%	54.3%	2.1%	374	466	18	858
California Law Review	55.9%	41.4%	2.8%	599	444	30	1072
Chicago Law Review	30.5%	68.9%	0.6%	198	448	4	650
University of Pennsylvania Law Review	45.4%	53.8%	0.6%	437	518	6	962
Michigan Law Review	40.3%	58.4%	1.3%	390	565	13	968
Duke Law Journal	37.8%	61.4%	0.8%	224	364	5	593
Northwestern Law Review	42.3%	59.9%	1.7%	324	459	13	766
Virginia Law Review	36.8%	58.8%	1.1%	335	535	10	910
Cornell Law Review	42.1%	56.2%	1.2%	328	438	9	780
Georgetown Law Journal	41.4%	57.2%	1.5%	455	629	16	1100
Texas Law Review	32.4%	61.0%	1.7%	334	630	18	1032
UCLA Law Review	50.0%	47.2%	2.8%	407	384	23	814
Vanderbilt Law Review	40.7%	57.8%	1.4%	253	359	9	621
USC Law Review	42.2%	55.4%	2.4%	248	325	14	587
Washington University Law Review	46.0%	53.1%	0.9%	353	407	7	767
Minnesota Law Review	50.2%	49.4%	0.4%	357	351	3	711
Emory Law Journal	52.5%	47.1%	0.4%	263	236	2	501
Boston University Law Review	46.8%	52.4%	0.8%	288	322	5	615
Indiana Law Journal	36.3%	73.8%	1.6%	209	425	9	576

¹⁵² Not all percentages add up to one hundred because at many schools we were unable to identify the gender of all individuals.

Notre Dame Law Review	35.6%	64.4%	0.0%	170	307	0	477
Illinois Law Review	42.5%	57.2%	0.3%	287	387	2	676
Boston College Law Review	47.6%	51.0%	1.4%	267	286	8	561
Iowa Law Review	40.5%	58.2%	1.3%	215	309	7	531
George Washington Law Review	43.5%	53.3%	3.0%	351	430	24	806
William & Mary Law Review	41.5%	57.5%	1.2%	311	431	9	750
Alabama Law Review	34.7%	63.9%	1.4%	250	460	10	720
Fordham Law Review	45.1%	52.0%	2.9%	456	525	29	1010
North Carolina Law Review	45.5%	49.6%	3.3%	278	303	20	611
Washington & Lee Law Review	34.4%	64.2%	1.4%	127	237	5	369
Washington Law Review	49.0%	48.4%	2.6%	242	239	13	494
Georgia Law Review	43.6%	54.2%	2.5%	281	349	16	644
Ohio State Law Journal	41.4%	56.5%	1.8%	358	489	16	865
Wisconsin Law Review	45.6%	49.7%	3.7%	381	415	31	835
UC Davis Law Review	55.0%	41.8%	3.5%	343	261	22	624
Hastings Law Journal	48.8%	49.9%	1.3%	414	423	11	848
Wake Forest Law Review	45.3%	54.3%	0.4%	303	363	3	669
BYU Law Review	25.3%	74.0%	0.8%	166	486	5	657
George Mason Law Review	37.0%	62.3%	0.7%	214	360	4	578
Arizona Law Review	44.8%	53.9%	1.3%	273	328	8	609
American University Law Review	54.0%	42.6%	3.4%	509	401	32	942
Tulane Law Review	47.2%	51.3%	1.6%	298	324	10	632
Colorado Law Review	51.9%	47.3%	0.9%	304	277	5	586
Utah Law Review	36.0%	61.9%	2.1%	154	265	9	428
Maryland Law Review	56.6%	41.5%	1.9%	269	197	9	475
SMU Law Review	53.3%	43.9%	2.8%	266	219	14	499
Cardozo Law Review	38.8%	59.3%	1.8%	274	419	13	706
Total	43.2%	49.4%	2.3%	15707	20073	600	36385

Appendix E: Note Publication Data by School¹⁵³

Journal	# Women	# Men	Total	% Women	% Men
Yale Law Journal	70	143	213	32.9%	67.1%
Stanford Law Review	29	59	88	33.0%	67.1%
Columbia Law Review	55	99	155	35.5%	63.9%
New York University Law Review	86	123	210	41.0%	58.6%
California Law Review	70	58	133	52.6%	43.6%
University of Chicago Law Review	57	121	181	31.5%	66.9%
University of Pennsylvania Law Review	34	64	100	34.0%	64.0%
Michigan Law Review	32	66	99	32.3%	66.7%
Duke Law Journal	48	88	139	34.5%	63.3%
Northwestern University Law Review	43	62	106	40.6%	58.5%
Virginia Law Review	22	66	88	25.0%	75.0%
Cornell Law Review	31	69	100	31.0%	69.0%
Georgetown Law Journal	50	70	120	41.7%	58.3%
UCLA Law Review	53	53	109	48.6%	48.6%
Texas Law Review	37	83	121	30.6%	68.6%
Vanderbilt Law Review	60	98	161	37.3%	60.9%
Southern California Law Review	42	74	118	35.6%	62.7%
Washington University Law Review	62	57	121	51.2%	47.1%
Boston University Law Review	43	56	100	43.0%	56.0%
Emory Law Journal	50	53	104	48.1%	51.0%
Minnesota Law Review	56	55	113	49.6%	48.7%
Indiana Law Journal	35	63	101	34.7%	62.4%
Notre Dame Law Review	33	76	109	30.3%	69.7%
University of Illinois Law Review	39	67	107	36.5%	62.6%
Boston College Law Review	55	63	120	45.8%	52.5%
Iowa Law Review	66	80	149	44.3%	53.7%
George Washington Law Review	37	34	71	52.1%	47.9%
William and Mary Law Review	33	69	105	31.4%	65.7%
Alabama Law Review	53	81	136	39.0%	59.6%
Fordham Law Review	104	106	221	47.1%	48.0%
North Carolina Law Review	34	53	92	37.0%	57.6%
Washington and Lee Law Review	47	99	146	32.2%	67.8%
Washington Law Review	71	74	145	49.0%	51.0%
Georgia Law Review	54	59	114	47.4%	51.8%
Ohio State Law Journal	28	63	96	29.2%	65.6%
University of California Davis Law Review	44	31	81	54.3%	38.3%
Wisconsin Law Review	45	68	115	39.1%	59.1%
Hastings Law Journal	45	66	111	40.5%	59.5%
Wake Forest Law Review	22	14	37	59.5%	37.8%
Brigham Young University Law Review	19	113	133	14.3%	85.0%
George Mason Law Review	37	47	84	44.1%	56.0%

¹⁵³ Not all percentages add up to one hundred because at many schools we were unable to identify the gender of all individuals.

Arizona Law Review	67	70	138	48.6%	50.7%
Maryland Law Review	13	20	33	39.4%	60.6%
American University Law Review	49	42	92	53.3%	45.6%
Tulane Law Review	24	39	63	38.1%	61.9%
University of Colorado Law Review	35	39	74	47.3%	52.7%
Utah Law Review	22	37	59	37.3%	62.7%
Southern Methodist University Law Review	37	38	75	49.3%	50.7%
Cardozo Law Review	42	91	137	30.7%	66.4%
Florida Law Review	49	67	117	41.9%	57.3%
Arizona State Law Journal	47	57	104	45.2%	54.8%
Total	2316	3443	5844	39.6%	58.9%

Appendix F: Note Topics by Gender

Topic Areas	# Women	# Men	Total	% Women	% Men
Administrative	42	67	109	38.5%	61.5%
Antitrust	9	35	44	20.5%	79.5%
Bankruptcy	22	51	73	30.1%	69.9%
Civil Procedure	90	153	243	37.0%	63.0%
Constitutional	177	327	504	35.1%	64.9%
Contracts	8	29	37	21.6%	78.4%
Copyright	32	67	99	32.3%	67.7%
Corporate	44	94	138	31.9%	68.1%
Criminal	208	295	503	41.4%	58.6%
Cyber	72	97	169	42.6%	57.4%
Disability	24	22	46	52.2%	47.8%
Education	82	73	155	52.9%	47.1%
Employment	107	111	218	49.1%	50.9%
Energy	3	5	8	37.5%	62.5%
Environmental	51	76	127	40.2%	59.8%
Ethics	24	38	62	38.7%	61.3%
Evidence	60	67	127	47.2%	52.8%
Family	87	29	116	75.0%	25.0%
Finance	36	74	110	32.7%	67.3%
Gender	17	5	22	77.3%	22.7%
Health	116	108	224	51.8%	48.2%
Immigration	60	33	93	64.5%	35.5%
Indian Law	13	14	27	48.1%	51.9%
Intellectual Property	8	17	25	32.0%	68.0%
International	114	139	253	45.1%	54.9%
Legislative	1	3	4	25.0%	75.0%
Maritime	2	10	12	16.7%	83.3%
National Security	28	82	110	25.5%	74.5%
Other	185	306	491	37.7%	62.3%
Patent	31	85	116	26.7%	73.3%
Property	66	77	143	46.2%	53.8%
Religion	33	57	90	36.7%	63.3%
Securities	16	51	67	23.9%	76.1%
Sports	2	7	9	22.2%	77.8%
Tax	33	48	81	40.7%	59.3%
Torts	41	111	152	27.0%	73.0%
Trademark	16	24	40	40.0%	60.0%

Appendix G: Editor Survey

Student Note Publication Practices

This survey is intended to gather information about how law reviews select student notes for publication. Please complete the questions to the best of your knowledge. If you do not know the answer to a question, please indicate that in the survey.

What law school do/did you attend?

What year in law school are you?

- 2L
- 3L
- Other

What is your position on the law review?

- Lead Note Editor
- Note Editor
- Editor-in-Chief
- Articles Editor
- Managing Editor
- Other: _____

Who is eligible to submit a student note for publication in the law review?

- 2L law review members
- 3L law review members
- All law review members
- All students at your school
- Any law student
- Other: _____

Which of the following are considered in the member selection process for your law review?

- Grades
- Bluebooking exercise
- Writing exercise
- Diversity factors
- Other: _____

Please provide any other relevant information about the member selection process for your law review:

Does your law review have a formal note writing process?

- Yes
- No

Please describe the note writing process for your law review:

Does your law review have a competitive note selection process?

- Yes
- No

Describe the note selection process for your law review. Please include such information as whether the selection process is blind; whether there are any formal guidelines that authors must meet; whether the topic of the note plays a role; and whether faculty members are involved in selection:

Does your law review keep records of how many men and women submit notes for publication?

- Yes
- No

If you had to guess, would you predict that more men or more women typically submit notes for publication in your law review?

- Significantly more men
- A few more men
- Significantly more women
- A few more women
- About the same number of men and women

If you had to guess, would you predict that more men or more women typically have notes selected for publication in your law review?

- Significantly more men
- A few more men
- Significantly more women
- A few more women
- About the same number of men and women

To the extent there is a gender disparity in either membership or publication, what do you think is the explanation for that disparity?

Has your law review ever discussed gender disparity in either membership or note publication?

Appendix H: Author Survey

Student Note Publication Experiences

This survey is intended to gather information about the note/comment publication process from the perspective of student members of law reviews. Please complete the questions to the best of your knowledge. If you do not know the answer to a question, please indicate that in the survey.

What law school do/did you attend?

When did you or do you expect to graduate?

Please select your gender.

- Female
- Male
- Other: _____

Does/did your law review have a formal note/comment writing process?

- Yes
- No

Does/did your law review require its members to write a note/comment?

- Yes
- No

Please describe the note/comment writing process for your law review.

How did you choose the topic for your note/comment? Please select all relevant answers.

- A professor suggested the topic
- I learned about the topic in a class
- I had previous experience in the topic area
- No specific reason

Did a professor assist you during the writing process?

- Yes
- No

If a professor did assist in the writing process, please indicate the level of participation. Please select all relevant answers.

- A professor provided guidance on the initial topic
- A professor reviewed drafts for technical and grammatical errors
- A professor reviewed drafts with substantive comments

Did your law review alter your note/comment prior to publication?

- Yes
- No

To the extent you can recall, briefly describe the editing process after your note/comment was selected for publication.

If you have graduated, did publishing a note/comment help you in your career in any way?

- Yes
- No
- N/A

If publishing a note/comment has helped you in your career, briefly describe how so.

If you had to guess, would you predict that more men or more women typically have notes selected for publication in your law review?

- Significantly more men.
- A few more men.
- Significantly more women.
- A few more women.
- About the same number of men and women.

In your view, did gender play an explicit or implicit role in any aspect of law review tryouts, membership, or note publication?

Has your law review ever discussed gender disparity in either membership or note publication?